

**BEFORE THE NATIONAL ADMINISTRATIVE OFFICE OF CANADA  
PURSUANT TO THE NORTH AMERICAN AGREEMENT ON LABOUR COOPERATION**

United Steelworkers of America (Canadian National Office); United Steelworkers of America, AFL-CIO/CLC; International Association of Machinists and Aerospace Workers; National Automobile, Aerospace, Transportation and General Workers Union of Canada; International Brotherhood of Teamsters, AFL-CIO; Union of Needle Trades, Industrial and Textile Employees; United Electrical, Radio and Machine Workers of America; United Paperworkers International Union; Authentic Workers' Front (Frente Auténtico del Trabajo); Canadian Labour Congress; National Workers Union (Union Nacional de Trabajadores); American Federation of Labour and Congress of Industrial Organizations; et al.

**PETITIONERS**

-and-

Echlin, Inc.; ITAPSA; American Brakeblock; Confederation of Mexican Workers (Confederacion de Trabajadores Mexicanos) and the National Union of Mexican Workers in the Automotive and Allied Industries; and the Federal Conciliation and Arbitration Board of Mexico

**RESPONDENTS**

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**PUBLIC COMMUNICATION  
TO THE NATIONAL ADMINISTRATIVE OFFICE OF CANADA  
REGARDING THE DENIAL OF WORKERS' RIGHTS BY  
ECHLIN, INC., ITAPSA, AMERICAN BRAKEBLOCK,  
THE CONFEDERATION OF MEXICAN WORKERS (CTM),  
AND THE FEDERAL CONCILIATION AND  
ARBITRATION BOARD OF MEXICO**

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**PART I – NATURE OF THE PUBLIC COMMUNICATION**

**A. SUMMARY OF SUBMISSIONS**

The Petitioners request a review of events surrounding the representation election which was held at the ITAPSA plant in the Municipality of Reyes La Paz, Mexico on September 9, 1997. The election was ordered and supervised by the Federal Conciliation and Arbitration Board<sup>1</sup> ("FCAB") and its purpose was to determine the bargaining agent for the ITAPSA workers. The incumbent union in the election was the National Union of Mexican Workers in the Automotive and Allied Industries,<sup>2</sup> which comprises Section 15 of the Confederation of Mexican Workers<sup>3</sup> ("CTM"), a labour confederation which is closely linked with the dominant political party in Mexico. The applicant union in the election was the Mexican Union of Workers in the Metal, Steel, Iron, and Allied Industries<sup>4</sup> ("STIMAHCS"), an independent trade union affiliated with the Authentic Workers' Front<sup>5</sup> ("FAT").

The submissions of the Petitioners are as follows:

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<sup>1</sup> Junta Federal de Conciliación y Arbitraje.

<sup>2</sup> Sindicato Nacional de Trabajadores de la Industria Automotriz, Similares y Conexos de la Republicana Mexicana.

<sup>3</sup> Confederación de Trabajadores Mexicanos.

<sup>4</sup> Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares.

<sup>5</sup> Frente Auténtico del Trabajo.

1. THAT during the organizing drive and the representation election ITAPSA and the CTM violated provisions of Mexican law which protect workers' rights to freely associate and to organize a union of their choice. The conduct of which the Petitioners complain includes: surveillance of employees on and off the worksite; threats of physical violence, rape and dismissal; discriminatory dismissals of approximately fifty workers for union activity; use of over 150 armed thugs to intimidate the workers; assaults on union representatives during the election; coercion of the voters by intimidation; and tampering with the election process by preparing a fraudulent voters list and by allowing numerous non-employees to vote.
2. THAT in the months following the representation election the CTM and American Brakeblock<sup>6</sup> have continued to violate provisions of Mexican law which protect workers' rights to freely associate and to organize a union of their choice by directing hired thugs to attack STIMAHCS supporters, and with respect to the CTM, by circumventing orders of the FCAB respecting reinstatement of workers unjustly dismissed from ITAPSA;
3. THAT ITAPSA has violated the occupational safety and health provisions of Mexican law by exposing workers to excessive risk of illness and injury, and by exposing workers to high levels of contaminants without providing necessary protective equipment;
4. THAT Mexico and the FCAB have violated Article 3 of the NAALC by failing to promote compliance with and effectively enforce Mexican labour laws which provide for the following: protection for workers' rights to freely associate and to organize a union of their choice; protection from violence and coercion; protection from discriminatory dismissals; protections for the safety and security of workers who wish to vote; and guarantees of fair election procedures;

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<sup>6</sup> America Brakeblok S.A. de C.V.

5. THAT Mexico and the FCAB have violated Article 5 of the NAALC by failing to ensure that FCAB administrative and labour tribunal proceedings are fair, equitable and transparent. The specific FCAB actions of which the Petitioners complain include: denials of due process, notice and the opportunity to be heard; unwarranted delays in proceedings; and unfair and inequitable election procedures requiring workers to vote verbally and publically before ITAPSA and CTM representatives;
6. THAT Mexico and the FCAB have violated Article 5(4) of the NAALC by failing to ensure that the FCAB is impartial and independent, and by failing to ensure that the FCAB did not have a substantial interest in the outcome of the election. Specifically, the Petitioners submit that the FCAB includes representatives with a personal interest in the CTM, and that the FCAB is influenced by policies which support the CTM over independent unions;
7. THAT Mexico and the FCAB have violated Article 4 of the NAALC by failing to ensure access to labour tribunals and procedures for the enforcement of rights under Mexican law. Specifically, FCAB procedures do not provide for elections to be suspended or investigations conducted where allegations of illegal conduct arise. Further, the FCAB has indicated that it will not accept or consider objections regarding the administration of elections or inequitable election procedures. In the present case, the FCAB also failed to provide notice of FCAB proceedings, and has repeatedly denied STIMAHCS an opportunity to be heard and to present evidence; and
8. THAT Mexico and the FCAB have violated Article 2 of the NAALC by failing to ensure that Mexican labour laws and regulations provide for high labour standards protecting freedom of association and the right to organize. Specifically, the FCAB has failed to require that representation elections be held in neutral locations, by secret ballot, and with adequate protections for the safety and security of workers who wish to vote. Further, Mexico and the FCAB have failed to prohibit incumbent



unions, such as the CTM, from expelling members solely for exercising their right to organize an independent union, even where such expulsions result in automatic dismissals.

**B. JURISDICTION OF THE NAO**

The jurisdiction of the NAO to review labour law matters arising in Mexico is provided by Article 16(3) of the NAALC, which states:

"Each NAO shall provide for the submission and receipt, and periodically publish a list, of public communications on labor law matters arising in the territory of another Party. Each NAO shall review such matters, as appropriate, in accordance with domestic procedures."

The domestic procedures which regulate the review of labour law matters under the NAALC are set out in the "Canadian NAO Guidelines for Public Communications Under Articles 16(3) and 21 of the NAALC." The Petitioners submit that the present public communication meets all of the requirements for acceptance for review.

**C. VIOLATIONS OF THE NAALC**

The Petitioners submit that Mexico and the FCAB have violated Article 3 of the NAALC, which states, in part:

"Article 3: Government Enforcement Action

1. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, such as:...

(b) monitoring compliance and investigating suspected violations, including through on-site inspections;...

(g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law."

The Petitioners submit that Mexico and the FCAB have failed to promote compliance with and effectively enforce Mexican laws that protect workers' rights to freely associate and to organize a union of their choice. Mexican laws prohibit coercion and guarantee fair election procedures. FCAB representatives witnessed numerous incidents of physical violence, intimidation and election fraud, but failed to investigate, initiate proceedings, or provide sanctions for the illegal conduct. In sum, no consideration has been given to allegations of illegal conduct during the representation election. Further, although the FCAB ultimately did enforce Mexican law and order reinstatement of the workers who had been dismissed for union activity, the reinstatement orders were not enforced when ITAPSA and the CTM refused to allow the workers to return to work.

The Petitioners further submit that Mexico and the FCAB have failed to ensure that FCAB proceedings conform with the procedural guarantees set out in Article 5 of the NAALC. Article 5 states, in part:

"Article 5: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labour law are fair, equitable and transparent and, to this end, each Party shall provide that:

- (a) such proceedings comply with due process of law;...
- (c) the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and
- (d) such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays...

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:...

- (b) made available without undue delay to the parties to the proceedings...
- (c) based on information or evidence in respect of which the parties were offered the opportunity to be heard...

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

The Petitioners submit that the FCAB proceedings were not fair, equitable and transparent. The representation election was conducted in a climate of violence, intimidation and fraud. Further, the independent union, STIMAHCS, was repeatedly denied due process of law, notice of FCAB proceedings, and the opportunity to present information and evidence respecting inequitable election procedures and violations of Mexican law. In addition, FCAB proceedings were characterized by persistent and unwarranted delays which consistently served the interests of the campaign of intimidation organized by ITAPSA and the CTM.

The Petitioners further submit that the FCAB was not impartial and not independent, and that FCAB representatives had a substantial interest in the outcome of the election, because policies of the dominant political party are supportive of the CTM and because the union representative on the FCAB was also a CTM representative.

The Petitioners further submit that Mexico and the FCAB have failed to ensure private access to enforcement action, in violation of Article 4 of the NAALC, which provides, in part:

"Article 4: Private Action

1. Each Party shall ensure that such persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labour law.

2. Each Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under:

- (a) its labor law...

can be enforced."

The Petitioners submit that Mexico and the FCAB have violated Article 4 by failing to provide procedures by which laws protecting the workers from intimidation could be enforced. Specifically, the FCAB has no procedure by which elections may be suspended, or investigations conducted where allegations of illegal conduct arise during a representation election. Further, the FCAB has indicated that it will not accept or consider objections regarding the administration of elections or inequitable election procedures. In the present case, the FCAB also failed to ensure appropriate access to FCAB proceedings following the election by failing to provide notice, and then by refusing to allow STIMAHCS an opportunity to be heard and to present evidence. The FCAB subsequently issued a decision which upheld the election results on the grounds that no evidence of illegal conduct had been presented.

The Petitioners further submit that the Mexico and the FCAB have failed to provide for high labour standards as required by Article 2 of the NAALC, which states:

**"Article 2: Levels of Protection**

Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity [sic] workplaces, and shall continue to strive to improve those standards in that light."

The Petitioners submit that Mexico has failed to ensure that its labour laws and regulations provide for high labour standards by failing to require that representation elections be held by secret ballot, in neutral locations, and with adequate protections for the safety and security of workers who wish to vote. Further, Mexico and the FCAB have failed to provide adequate protection for the right to organize by allowing unions to expel members solely for exercising the right to organize an independent union, and then by upholding dismissals based on those expulsions.

**D. RELIEF SOUGHT**

The Petitioners request the following relief:

1. THAT the Canadian NAO initiate a review, pursuant to Article 16(3) of the NAALC, of the events surrounding the representation election which was held at the ITAPSA plant in the Municipality of Reyes La Paz, Mexico on September 9, 1997;
2. THAT the NAO hold a full and public inquiry, with notice to the Respondents and all interested parties;
3. THAT the NAO issue a declaration that Mexico and the FCAB have violated Article 2 of the NAALC by failing to ensure that Mexican labour laws provide for high labour standards with respect to protections of freedom of association and the right to organize;
4. THAT the NAO issue a declaration that Mexico and the FCAB have violated Article 3 of the NAALC by failing to promote compliance with and effectively enforce Mexican labour laws protecting freedom of association and the right to organize;
5. THAT the NAO issue a declaration that Mexico and the FCAB have violated Article 4 of the NAALC by failing to ensure that persons with a legally recognized interest have appropriate access to labour tribunals for the enforcement of Mexican labour laws, and by failing to ensure that such persons have recourse to appropriate procedures by which rights arising under Mexican labour laws can be enforced.
6. THAT the NAO issue a declaration that Mexico and the FCAB have violated Article 5 of the NAALC by failing to ensure that FCAB proceedings are fair, equitable and transparent, and by failing to ensure that the FCAB is impartial and independent;

7. THAT the NAO demand that Mexico develop specific and enforceable guidelines and policies to address the violations of Articles 2, 3, 4, and 5 of the NAALC. The Petitioners specifically request that the guidelines and policies provide the following:
- A. measures to remedy the bias and conflict of interest which is systemic in the composition of the FCAB panels which administer and supervise representation elections;
  - B. procedures to ensure that the parties to FCAB proceedings are provided with proper notice of FCAB proceedings, and every opportunity to present information and evidence with respect to violations of Mexican labour laws;
  - C. procedures to ensure that elections are suspended, proceedings initiated and appropriate relief ordered where violations of protected rights have occurred;
  - D. procedures to ensure that accurate and verifiable voter lists are provided in advance of an election;
  - E. procedures to ensure that all elections are held by secret ballot, in neutral locations, and with adequate protections for the safety and security of workers who wish to vote; and
  - F. procedures to ensure that FCAB proceedings are expeditious and do not permit unwarranted delay;
8. THAT the NAO demand that the FCAB and other Mexican labour authorities require Echlin, ITAPSA, American Brakeblock and the CTM to comply with Mexican labour laws providing for occupational safety and health standards, and protections for freedom of association and the right to organize. The Petitioners specifically request the following:
- A. that the FCAB issue a declaration that the representation election held at the ITAPSA plant on September 9, 1997 is void by reason of the illegal conduct of ITAPSA and the CTM which violated the workers' freedom of association and the right to organize;

- B. that the FCAB schedule a representation election to determine the representational wishes of the majority of the ITAPSA workers, and that the election be administered in a manner that is fair, equitable and transparent, by secret ballot, in a neutral location, and with adequate protections for the safety and security of workers who wish to vote;
  - C. that the FCAB require ITAPSA to reinstate all ITAPSA workers discharged since May 26, 1997 to their former positions and shifts, with full rights and benefits, and compensation for all monies lost as a result of their dismissals; and
  - D. that the appropriate Mexican authorities inspect the ITAPSA plant, and issue resulting orders of compliance with occupational safety and health standards, including orders respecting the provision of adequate protective equipment, protection from asbestos exposure, testing of all workers who may have been exposed to toxic substances, and full compensation for damages suffered;
9. THAT the NAO demand that the FCAB and other Mexican authorities declare that the application of union exclusion clauses to workers who have voted for a non-incumbent union violates freedom of association and the right to organize under Mexican and international law;
10. THAT the NAO demand that Mexico establish a complete public registry of current union contracts, constitutions, by-laws and financial reports;
11. THAT the NAO Secretary recommend that the Minister of Labour request Ministerial Consultations pursuant to Article 22 of the NAALC regarding all such matters that may be properly be considered;
12. THAT following such consultations, the NAO Secretary recommend that the Minister of Labour request that an Evaluation Committee of Experts be established under

Article 23 of the NAALC regarding all such matters that may properly be considered; and

13. THAT the NAO grant such further relief as it may deem just and proper.

## PART II – STATEMENT OF FACTS

### **A. OVERVIEW**

In approximately June of 1996, workers at ITAPSA began to speak with union organizers at STIMAHCS about their rights under Mexican law. The workers were concerned about low wages, abusive supervisors, sexual harassment, and occupational safety and health issues. Historically, the CTM had not addressed these concerns.

In meetings held over a period of months, the STIMAHCS organizers informed the workers about their rights and the advantages of a democratic and representative union. On May 26, 1997, STIMAHCS filed a petition with the FCAB requesting a *recuento*, or representation election, to determine to which union the majority of the workers wished to belong.

When the STIMAHCS petition was filed, ITAPSA and the CTM initiated an aggressive campaign of intimidation that included surveillance of workers, direct intimidation by threats and violence, and mass dismissals of STIMAHCS supporters. All of these tactics were facilitated by actions of the FCAB, which failed to provide sanctions for illegal conduct during the campaign, allowed the election to be delayed with specious preliminary motions, and then identified STIMAHCS supporters to ITAPSA and the CTM by cancelling the first scheduled vote without providing notice to STIMAHCS.

On the day of the representation election, ITAPSA and the CTM hired more than 150 armed thugs and allowed them into the plant to intimidate the voters. The vote itself was taken publically and verbally in a climate of violence and threats of violence. Further,



the voting list prepared by ITAPSA was fraudulent, and numerous people who did not work for ITAPSA were allowed to vote. Representatives of the FCAB supervised the election, but failed to provide adequate protections for the safety and security of the workers who wished to vote. The FCAB representatives then refused to suspend the election, initiate an investigation, or enforce those provisions of Mexican law which guarantee fair elections and which protect workers from intimidation and coercion.

The CTM won the election, and STIMAHCS immediately filed objections with the FCAB regarding all of the illegal conduct described above, and regarding the inequitable election procedures. The FCAB scheduled a hearing to review the conduct of the election, but provided neither STIMAHCS nor the ITAPSA workers with notice of the hearing. The STIMAHCS representatives only learned that a hearing had occurred after the fact, and they filed a second objection regarding the failure to provide notice and the denial of an opportunity to be heard. The FCAB held that it was not required to provide notice of FCAB proceedings, and refused to reconvene the hearing or allow STIMAHCS an opportunity to present evidence. Then, in its final decision, the FCAB denied STIMAHCS' complaint on the grounds that it had failed to present any evidence. The FCAB confirmed that the CTM continued to represent the ITAPSA workers.

In the months since the representation election, the campaign of intimidation has continued. Armed thugs have attacked STIMAHCS supporters who disseminated information about STIMAHCS and the conduct of the election. The dismissed workers, although ordered reinstated by the FCAB, have not been permitted to return to work by agreement between the CTM and ITAPSA. The FCAB has failed to enforce its reinstatement orders.

The Petitioners request a review of the events surrounding the representation election held on September 9, 1997. The Petitioners submit that ITAPSA and the CTM have violated the workers' rights to freely associate and to organize a union of their choice. The Petitioners further submit that Mexico and the FCAB have violated Articles 2, 3, 4, and

5 of the NAALC, the details of which are discussed below.

## **B. WORKING CONDITIONS AT ITAPSA**

The ITAPSA workers have identified a number of concerns regarding working conditions at the ITAPSA plant, including low wages, abusive supervisors, and sexual harassment. According to many of the workers, however, occupational safety and health is a major problem at the ITAPSA plant.<sup>7</sup> There have been numerous accidents and a number of workers have died or become seriously ill because of dangerous conditions in the plant. Some of the causes of accidents are obsolete and ill-repaired machinery, difficult work assignments, and heavy workloads.<sup>8</sup> One worker describes an incident in which two brothers drowned in large containers of caustic soda. In other accidents, several people lost fingers, and one man lost four fingers on his left hand.<sup>9</sup>

The most serious of the specific hazards cited by the workers is asbestos. One group of workers, for example, is required to dump asbestos from buckets into large containers with little or no protective clothing.<sup>10</sup> Similarly, the "block press men" are responsible for pressing asbestos into moulds, and the only protective equipment available is "small gauze masks" which provide inadequate protection.<sup>11</sup> Workers describe the ventilation system as "poor" and note that there is asbestos dust and "contamination" in the plant.<sup>12</sup>

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<sup>7</sup> Parada Leon Affidavit, Petitioners' Book of Documents, Tab A-7 (hereinafter all references to Petitioners' Book of Documents cited by Tab No.), paragraph 6; Hernandez Marquez Affidavit, Tab A-12, paragraph 3; Martinez Orozco Affidavit, Tab A-14, paragraph 4; Ruiz Rubio Affidavit, Tab A-15, paragraph 6; Najera Vazquez Affidavit, Tab A-21, paragraph 3.

<sup>8</sup> Parada Leon Affidavit, Tab A-7, paragraph 6; Hernandez Marquez Affidavit, Tab A-12, paragraph 3; Martinez Orozco Affidavit, Tab A-14, paragraph 4; Ruiz Rubio Affidavit, Tab A-15, paragraph 6.

<sup>9</sup> Ruiz Rubio Affidavit, Tab A-15, paragraph 6.

<sup>10</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 4.

<sup>11</sup> Parada Leon Affidavit, Tab A-7, paragraph 6.

<sup>12</sup> *Ibid.*; Hernandez Marquez Affidavit, Tab A-12, paragraph 3.

Worker education is another concern that is related to safety and health. One worker states that "STIMAHCS helped us to understand the problems of working around asbestos."<sup>13</sup> In contrast, the CTM did not support the workers in their concerns about safety and malfunctioning machinery.<sup>14</sup> On occasions when they spoke with a union representative about problems at ITAPSA, they had been told that they should not complain and that they should be thankful to have a job.<sup>15</sup>

Workers began to discuss their safety and health concerns with STIMAHCS organizers after approximately June, 1996.<sup>16</sup> As the months progressed, more workers learned of STIMAHCS, until meetings of approximately five workers were held every day of the week in different stores or at workers' homes near the plant.<sup>17</sup>

Based on the strength of their meetings with the workers, the STIMAHCS organizers determined that a majority of the workers supported STIMAHCS.<sup>18</sup> On May 26, 1997, STIMAHCS filed a petition with the FCAB requesting an election to determine whether the majority of the workers wanted to be represented by STIMAHCS or by the incumbent union, Section 15 of the CTM. It was at this point that the organizing drive became public knowledge, and the campaign of intimidation organized by ITAPSA and the CTM commenced.

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<sup>13</sup> Parada Leon Affidavit, Tab A-7, paragraph 6.

<sup>14</sup> Parada Leon Affidavit, Tab A-7, paragraph 3; Hernandez Marquez Affidavit, Tab A-12, paragraph 3; Martinez Orozco Affidavit, Tab A-14, paragraph 5; Najero Vazquez Affidavit, Tab A-21, paragraph 3.

<sup>15</sup> Martinex Orozco Affidavit, Tab A-14, paragraph 4.

<sup>16</sup> Parada Leon Affidavit, Tab A-7, paragraph 3; Hernandez Marquez Affidavit, Tab A-12, paragraph 3; Martinez Orozco Affidavit, Tab A-14, paragraph 4; Ruiz Rubio Affidavit, Tab A-15, paragraph 6.

<sup>17</sup> Parada Leon Affidavit, Tab A-7, paragraph 3; Hernandez Marquez Affidavit, Tab A-12, paragraph 6.

<sup>18</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 7.

## **C. THE CAMPAIGN OF INTIMIDATION**

### **1. Surveillance Activities**

Immediately after the STIMAHCS petition was filed, ITAPSA supervisors and CTM representatives placed the workers under close surveillance at the plant.<sup>19</sup> Five or six "golpeadores" or "thugs" were hired for this purpose.<sup>20</sup> Workers were monitored at their work stations and during break times. If more than two or three workers gathered together, a supervisor would approach to interrupt or to order the workers back to their stations.<sup>21</sup> The workers describe the surveillance at the ITAPSA plant as "strict," "rigorous," and "more than normal."<sup>22</sup>

The surveillance of workers was not confined to the plant. As the date of the election approached, ITAPSA and the CTM also placed workers' homes under surveillance. One worker saw two people in a green car parked in front of her house for an hour and a half.<sup>23</sup> She had seen the same car drive in and out of the ITAPSA plant on other occasions. Workers were also monitored while engaged in union activity. According to one worker, two individuals in a green car kept watch over employees who were distributing leaflets on behalf of STIMAHCS.<sup>24</sup>

The surveillance of the workers was part of a larger anti-union campaign which included threats, intimidation and physical violence. In this context, surveillance was an implicit threat. The employees who were watched by the individuals in the green car feared

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<sup>19</sup> Hernandez Cruz Affidavit, Tab A-3, paragraph 5; Ruiz Rubio Affidavit, Tab A-15, paragraph 7.

<sup>20</sup> Ruiz Rubio Affidavit, Tab A-15, paragraph 13.

<sup>21</sup> *Ibid.*; Hernandez Marquez Affidavit, Tab A-12, paragraph 4; Velazquez Javier Affidavit, Tab A-6, paragraph 9; Garcia Luna Affidavit, Tab A-10, paragraph 3; Martinez Orozco Affidavit, Tab A-14, paragraph 4; Najera Vazquez Affidavit, Tab A-21, paragraph 4.

<sup>22</sup> Ruiz Rubio Affidavit, Tab A-15, paragraph 7; Hernandez Marquez Affidavit, Tab A-12, paragraph 4.

<sup>23</sup> Delgado Navarro Affidavit, Tab A-13, paragraph 9.

<sup>24</sup> Hernandez Marquez Affidavit, Tab A-12, paragraph 9.

at the time that they would be attacked.<sup>25</sup> Benedicto Martinez Orozco summarized the pattern of surveillance and intimidation by ITAPSA and the CTM:

"They watched workers very closely, trying to determine which workers sympathized with the union. They questioned workers about their support for STIMAHCS, in some cases threatening and harassing workers and in others actually firing them... In some cases they tried to intimidate workers and their families."<sup>26</sup>

## **2. Intimidation of STIMAHCS Supporters**

The intimidation of ITAPSA workers and STIMAHCS supporters began immediately after STIMAHCS filed the petition for a representation election with the FCAB on May 26, 1997. The first form that the intimidation took was new workloads and schedules.<sup>27</sup>

The workers who received the most onerous new workloads were those who were believed to be sympathetic to STIMAHCS or organizing support among the other workers. Workers were also given new schedules, or had their shifts changed, as punishment for union activity.<sup>28</sup> Benedicto Martinez Orozco explained that ITAPSA "forced workers to work more quickly, to do harder work, or changed their shifts."<sup>29</sup>

The department that molded asbestos was "targeted" for new workloads "because the company suspected that many of these workers were involved in organizing support for STIMAHCS."<sup>30</sup> Shortly after May 26, 1997, the department had its daily workload

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<sup>25</sup> *Ibid.*; Delgado Navarro Affidavit, Tab A-13, paragraph 9.

<sup>26</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 9.

<sup>27</sup> Hernandez Cruz Affidavit, Tab A-3, paragraph 6; Parada Leon Affidavit, Tab A-7, paragraph 4; Ruiz Rubio Affidavit, Tab A-15, paragraphs 7, 8.

<sup>28</sup> Hernandez Cruz Affidavit, Tab A-3, paragraph 6; Hernandez Alanis Affidavit, Tab A-1, paragraph 6; Ruiz Rubio Affidavit, Tab A-15, paragraphs 10, 11.

<sup>29</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 9.

<sup>30</sup> Hernandez Cruz Affidavit, Tab A-3, paragraph 6.

increased from 15 loads of asbestos moulds to 17 loads. Another worker, who was known to ITAPSA as an organizer for STIMAHCS, had his workload increased from 17 loads to 20 loads.<sup>31</sup>

The new work assignments had an effect on the safety of the workers in the plant. Increased workloads created more asbestos dust and dangerous conditions. One worker states that he was given more dangerous work and was isolated from other workers shortly after he was identified to a supervisor as a STIMAHCS organizer.<sup>32</sup>

The workers were also subjected to more direct forms of intimidation during the organizing campaign. Several workers reported that they were directly asked by supervisors and CTM representatives whether they supported STIMAHCS, or knew which workers did.<sup>33</sup>

Threats of violence were another form of intimidation. Ruben Ruiz Rubio, for example, was told by plant security that he shouldn't involve himself in independent union activity, and "that he would just end up hurting himself."<sup>34</sup> Another worker reported that ITAPSA and CTM representatives "told many workers that the workers should not come to the election because there would be trouble and violence."<sup>35</sup>

CTM representatives threatened numerous workers with dismissal if they became

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<sup>31</sup> Parada Leon Affidavit, Tab A-7, paragraph 4; Ruiz Rubio Affidavit, Tab A-15, paragraph 8.

<sup>32</sup> Ruiz Rubio Affidavit, Tab A-15, paragraph 11; Parada Leon Affidavit, Tab A-7, paragraph 6.

<sup>33</sup> Hernandez Marquez Affidavit, Tab A-12, paragraph 5; Martinez Orozco Affidavit, Tab A-14, paragraph 9; Hernandez Cruz Affidavit, Tab A-3, paragraph 7; Hernandez Alanis Affidavit, Tab A-1, paragraph 5; Hernandez Lopez Affidavit, Tab A-8, paragraphs 6, 7.

<sup>34</sup> Ruiz Rubio Affidavit A-15, paragraph 13.

<sup>35</sup> Velazquez Javier Affidavit, Tab A-6, paragraph 12.

involved with the independent union.<sup>36</sup> One worker was advised by Roberto Jimenez, a CTM representative, that he should watch out for his job and "shouldn't get involved in problems with another union."<sup>37</sup> Similarly, CTM representative Fortunado Rodriguez told a worker that he would be fired if he continued to be involved with STIMAHCS.<sup>38</sup> Roberto Jimenez told Gildardo Hernandez Lopez and many other workers that ITAPSA would close the plant or fire workers who supported STIMAHCS if the CTM was not re-elected.<sup>39</sup>

ITAPSA personnel held numerous captive audience meetings at which workers were intimidated or threatened with dismissal for union activity. At one such meeting, Pedro Morales, General Manager of ITAPSA, told the workers to vote for the CTM so that he, himself, would not lose his job.<sup>40</sup> Guillermo Vela Reyna, an Echlin Divisional Manager, held a series of meetings at which he advised workers that they should vote for the CTM, and that, if STIMAHCS should win the election, they would suffer serious consequences.<sup>41</sup>

Several workers reported that they were advised that ITAPSA was preparing a "list" of STIMAHCS supporters who would be fired. ITAPSA management told one worker that Echlin had ordered ITAPSA to fire all of the workers who "caused trouble".<sup>42</sup> Another worker related his conversation in detail:

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<sup>36</sup> *Ibid.*, paragraphs 6, 8; Delgado Navarro Affidavit, Tab A-13, paragraph 5; Najera Vazquez Affidavit, Tab A-21, paragraph 7; Garcia Galicia Affidavit, Tab A-4, paragraph 6; Buendia Valverde Affidavit, Tab A-20, paragraph 6.

<sup>37</sup> Garcia Galicia Affidavit, Tab A-4, paragraph 6.

<sup>38</sup> Najera Vazquez, Tab A-21, paragraph 4.

<sup>39</sup> Hernandez Lopez Affidavit, Tab A-8, paragraph 7.

<sup>40</sup> *Ibid.*, paragraph 8.

<sup>41</sup> Martinez Orozco, Tab A-14, paragraph 15.

<sup>42</sup> Hernandez Alanis Affidavit, Tab A-1, paragraph 7; Buendia Valverde Affidavit, Tab A-20, paragraph 6; Ruiz Rubio Affidavit, Tab A-15, paragraph 12.

"... I was called into the office of the Human Resource Director of the Company, Rosa Maria Bernal, who asked me who was going to vote for the STIMAHCS, the independent union. She wanted to know if I knew any advantages in voting for an independent union. I did not tell her how I was going to vote. She told me that if I voted for STIMAHCS, I would lose my job at ITAPSA and that I would have a difficult time getting a job anywhere else because ITAPSA would advise other companies about my union activities."<sup>43</sup>

### 3. Dismissals of STIMAHCS Supporters

Between May 26, 1997 and September 9, 1997, ITAPSA dismissed approximately 50 workers who supported STIMAHCS.<sup>44</sup> Some of these workers were told by ITAPSA personnel that they were being dismissed because of their union activities. Delgado Navarro, for example, was told by the Director of Human Resources, Rosa Maria Bernal, that she was being fired for her "contacts with STIMAHCS sympathizers."<sup>45</sup> Another worker described his conversation with Jose Luis de los Monteros, an Industrial Relations Manager for ITAPSA:

"He said I was fired because I had been seen talking with people from the STIMAHCS, and that if I didn't want to be fired that I had to tell him who these people were and that I had to name all the workers in the plant who were involved in organizing with the STIMAHCS. He said that if I told them all that information, I could save my job."<sup>46</sup>

More than 20 employees were dismissed on August 28, 1997, the day on which the election was initially scheduled to take place. On August 27, 1997, the CTM had filed a petition requesting that the election be cancelled. The FCAB immediately suspended the election without providing STIMAHCS or the workers with notice of the suspension or an opportunity to object.<sup>47</sup> Consequently, when a number of workers arrived to vote on

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<sup>43</sup> Hernandez Lopez Affidavit, Tab A-8, paragraph 6.

<sup>44</sup> Ruiz Rubio Affidavit, Tab A-15, paragraph 9; Martinez Orozco Affidavit, Tab A-14, paragraph 4.

<sup>45</sup> Delgado Navarro Affidavit, Tab A-13, paragraph 7.

<sup>46</sup> Velazquez Javier Affidavit, Tab A-6, paragraph 14.

<sup>47</sup> Najera Vazquez Affidavit, Tab A-21, paragraph 5; Martinez Orozco Affidavit, Tab A-14, paragraphs 10-12.



August 28, 1997, agents of ITAPSA and the CTM were able to film the workers as they prepared for the election. STIMAHCS supporters were easily identified, and were summarily dismissed later that day.<sup>48</sup>

All of the workers dismissed on August 28, 1997 were members of STIMAHCS.<sup>49</sup> Many were expressly told that they were dismissed because they were members of the independent union. One worker stated that he and six other workers were informed by Roberto Jimenez, a CTM representative, that "we were fired because we supported STIMAHCS." Another worker was given a similar reason for his termination:

"I was told by the guard that I could not go into work and that I was fired. The guard said that it was orders from the company. Just because I showed up to vote, I was identified by the company as a supporter of STIMAHCS."<sup>50</sup>

Some of the dismissed workers sought assistance from their union, the CTM. Gilberto Garcia Galicia summarized his discussion with his representative:

"...I talked with the CTM delegate, Roberto Jimenez, at his house in order to ask him to help me get my job back. Roberto Jimenez told me that the ITAPSA management believed that I was involved with the union movement in support of STIMAHCS and that it had been reported to the company that I had met with the union supporters on the morning of August 28th. He told me that therefore he would not be able to help me."<sup>51</sup>

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<sup>48</sup> Hernandez Alanis Affidavit, Tab A-1, paragraph 9; Hernandez Cruz Affidavit, Tab A-3, paragraph 9; Garcia Galicia Affidavit, Tab A-4, paragraph 7, 8; Parada Leon Affidavit, Tab A-7, paragraph 7; Garcia Luna Affidavit, Tab A-10, paragraph 4; Hernandez Marquez Affidavit, Tab A-12, paragraphs 7, 8; Delgado Navarro Affidavit, Tab A-13, paragraph 8; Buendia Valverde Affidavit, Tab A-20, paragraph 7; Najera Vazquez Affidavit, Tab A-21, paragraphs 5, 6.

<sup>49</sup> Hernandez Marquez Affidavit, Tab A-12, paragraph 7.

<sup>50</sup> Garcia Luna Affidavit, Tab A-10, paragraph 4.

<sup>51</sup> Garcia Galicia Affidavit, Tab A-4, paragraph 9.

#### 4. Coercion of Voters

At a hearing held on September 4, 1997, the FCAB rescheduled the representation election for September 9, 1997. Weapons and hired thugs began to arrive at the plant in the evening of September 8, 1997. At approximately 7:00 pm, workers at the plant witnessed arms being unloaded from a car driven by a member of the Judicial Police of the State of Mexico. Later in the evening, the workers for the first time observed armed men patrolling the grounds of the plant.<sup>52</sup>

The main group of thugs arrived at approximately 1:50 a.m. on September 9, 1997. A white truck and two blue and white buses without licence plates entered the factory grounds carrying approximately 170 men. The thugs were armed with sticks, chains, bars, tubes used for gas, and thin copper rods. They remained at the plant until 3:00 p.m. the following afternoon.<sup>53</sup>

According to Benedicto Martinez Orozco, the thugs belonged to a well-known group called "los chiquiticos," or "the little ones," which is used by the CTM to intimidate workers who are trying to organize independent unions.<sup>54</sup> Daniel Castillo, a CTM official, is known to be the leader of los chiquiticos, and he was photographed at the ITAPSA plant on September 15, 1997. Castillo was later interviewed by independent observers who were present.<sup>55</sup>

At approximately 6:00 a.m. on September 9, 1997, fifteen workers arrived at the plant to vote. All of these workers supported STIMAHCS and some wore stickers which read "Mi

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<sup>52</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 16; Hernandez Lopez Affidavit, Tab A-8, paragraph 11; Ruiz Rubio Affidavit, Tab A-15, paragraph 14; Najera Vazquez Affidavit, Tab A-21, paragraph 7.

<sup>53</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 17, 18.

<sup>54</sup> *Ibid.*

<sup>55</sup> Smucker Affidavit, Tab A-18, paragraph 5; Stevenson Affidavit, Tab A-19, paragraph 9; Transcript of Interview with Daniel Castillo (September 9, 1997), Tab B-1; Smucker Affidavit, Tab A-18, paragraph 5.

voto es para STIMAHCS." The workers were surrounded by a large group of thugs who threw bottles at the workers and threatened violence.<sup>56</sup> Then Daniel Castillo approached the workers and told them that if they remained on the factory grounds, they would be beaten up. Faced with these threats, the workers withdrew from the entrance to the plant.<sup>57</sup>

At 11:00 a.m., the same group of fifteen STIMAHCS supporters returned while approximately 100 other people were trying to enter the plant. The thugs controlled the entrance to the plant, and refused to allow the STIMAHCS supporters to enter.<sup>58</sup> Independent observers and members of the press were also denied entry.<sup>59</sup> At the same time, CTM supporters and numerous non-employees were permitted to enter the plant.<sup>60</sup>

Three representatives of STIMAHCS were allowed to enter the plant: Benedicto Martinez Orozco, General Secretary for STIMAHCS; Arturo Alcalde, legal counsel for STIMAHCS; and David Gonzales, a dismissed ITAPSA worker. These STIMAHCS representatives met with representatives of the FCAB, the CTM and ITAPSA to try to establish "some minimum conditions of fairness."<sup>61</sup> It was agreed that there would be three representatives from each of the CTM, ITAPSA, and STIMAHCS in the voting room with the FCAB. Minutes after this agreement was reached, approximately 20 people

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<sup>56</sup> Hernandez Cruz Affidavit, Tab A-3, paragraph 11; Garcia Galicia Affidavit, Tab A-4, paragraph 10; Velazquez Javier Affidavit, Tab A-6, paragraph 23.

<sup>57</sup> Hernandez Cruz Affidavit, Tab A-3, paragraph 11; Parada Leon Affidavit, Tab A-7, paragraph 8; Garcia Luna Affidavit, Tab A-10, paragraph 6; Delgado Navarro Affidavit, Tab A-13, paragraph 10; Martinez Orozco Affidavit, Tab A-14, paragraph 20; Ruiz Rubio Affidavit, Tab A-15, paragraph 15; Buendia Valverde Affidavit, Tab A-20, paragraph 10; Najera Vazquez Affidavit, Tab A-21, paragraph 8.

<sup>58</sup> Hernandez Marquez Affidavit, Tab A-12, paragraphs 11-13.

<sup>59</sup> Smucker Affidavit, Tab A-18, paragraph 8; Stevenson Affidavit, Tab A-19, paragraph 13.

<sup>60</sup> Garcia Luna Affidavit, Tab A-11, paragraph 6; Delgado Navarro Affidavit, Tab A-13, paragraph 13; Smucker Affidavit, Tab A-18, paragraph 7.

<sup>61</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 23.

wearing CTM stickers entered the room. The STIMAHCS representatives protested to the FCAB, but no action was taken.<sup>62</sup>

Those workers who were allowed to enter the plant to vote were forced to pass through a "gauntlet" of armed thugs who were yelling and throwing bottles and rocks. One of the thugs was photographed making gestures understood in Mexico to mean "you will die."<sup>63</sup> The thugs also threatened the workers and their families. The workers were told that "if they did not vote for the CTM, they would not come out of the voting room alive." Some of the women were told that if they did not vote for the CTM, they "would wind up with a big stomach," which was understood as a threat of rape.<sup>64</sup>

The CTM also controlled the voting room and the voting process. CTM representatives and thugs wearing CTM stickers lined the walls of the voting room and filled the hallway through which workers entered to cast their vote.<sup>65</sup> When the first worker voted for STIMAHCS, these thugs began to shout "Did you see who that was?" and "Take down his name."<sup>66</sup>

The voting process also fostered an atmosphere of intimidation and coercion. One at a time, each worker was escorted to the centre of the voting room by two thugs wearing CTM stickers who took the worker's identification and delivered it to a FCAB representative to be verified. One of the FCAB representatives then asked how the worker wished to vote. Each worker was required to vote verbally, and to sign a sheet of paper

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<sup>62</sup> *Ibid.*, paragraph 25.

<sup>63</sup> *Ibid.*, paragraph 26.

<sup>64</sup> *Ibid.*, paragraph 19; Velazquez Javier Affidavit, Tab A-6, paragraph 24.

<sup>65</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 26.

<sup>66</sup> *Ibid.*, paragraph 29.

confirming his or her vote.<sup>67</sup>

The General Secretary of STIMAHCS described the reactions of the workers in these terms:

"The reactions on the part of the workers were often quite similar. First they seemed very surprised to see two men at their side from the CTM. When the authorities asked them which union they voted for, first they looked around the room at all the thugs wearing CTM stickers, and then they looked back down at the ground and said 'with the CTM.' Mostly, the workers appeared genuinely afraid and, on one occasion, the worker was crying as she announced her vote. There was a mixture of resignation and fear on the part of the workers."<sup>68</sup>

Approximately twenty workers who supported STIMAHCS were never permitted to enter the ITAPSA grounds. Instead, a representative of the FCAB took their vote in the street outside of the plant. As with the voters inside the plant, each of these workers was required to state his or her vote verbally while surrounded by a crowd of armed thugs, CTM representatives and ITAPSA personnel, all of whom made comments and gestures that threatened physical violence.<sup>69</sup>

Beyond the coercion of voters, there were also obvious irregularities in the voting process. The voting list provided by ITAPSA was inaccurate and had been tampered with. It included workers entitled to vote as well as confidential employees who were not entitled to vote.<sup>70</sup> Eligible employees also were omitted from the voting list, while non-employees

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<sup>67</sup> *Ibid.*, paragraph 28.

<sup>68</sup> *Ibid.*

<sup>69</sup> Hernandez Alanis Affidavit, Tab A-1, paragraph 11; Hernandez Cruz Affidavit, Tab A-3, paragraph 12; Garcia Galicia Affidavit, Tab A-4, paragraph 12; Parada Leon Affidavit, Tab A-7, paragraph 11; Garcia Luna Affidavit, Tab A-10, paragraph 7; Hernandez Marquez Affidavit, Tab A-12, paragraph 13; Delgado Navarro Affidavit, Tab A-13, paragraph 13; Smucker Affidavit, Tab A-18, paragraph 10; Buendia Valverde Affidavit, Tab A-20, paragraph 14.

<sup>70</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 27.

who had arrived the night before were added to the list.<sup>71</sup> The result was that non-employees were permitted to vote, and workers who were entitled to vote were prevented from doing so.

Later during the election, the STIMAHCS representative who was acting as scrutineer was physically pushed away from the voting list. He was not permitted to even confirm that the people being escorted into the voting room by the CTM were on the list. As the General Secretary of STIMAHCS noted, "it was impossible to really know if anybody voting was really a worker at ITAPSA."<sup>72</sup>

At one point in the election, people began voting very rapidly, without having their names checked against the voting list. The STIMAHCS representatives were advised that these people had been identified as workers before entering the voting room. One STIMAHCS representative left the voting room to try to verify that this had occurred. He was assaulted and beaten by a group of thugs while outside.<sup>73</sup> STIMAHCS was never able to verify what had occurred outside of the voting room.<sup>74</sup>

On several occasions during the election, the STIMAHCS representatives asked the FCAB representatives to intervene, restrain the thugs, or suspend the election. The FCAB representatives took no action, except to prepare an election report which summarized the STIMAHCS complaints and the denials from the representatives of ITAPSA and the CTM.<sup>75</sup> The FCAB representatives made no findings of fact and did not record their own observations. Further, the STIMAHCS representatives were not permitted to submit witness

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<sup>71</sup> Smucker Affidavit, Tab A-18, paragraph 12.

<sup>72</sup> Martinez Orozco Affidavit, Tab A-14, paragraphs 27, 30.

<sup>73</sup> *Ibid.*, paragraph 31; Parada Leon Affidavit, Tab A-7, paragraph 10.

<sup>74</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 31.

<sup>75</sup> FCAB Election Report (September 9, 1997), Tab B-2; FCAB Election Report (Spanish)(September 9, 1997), Tab B-3.

statements, photographs or videotaped evidence with the report. The results of the election, as set out in the election report, were as follows: 210 votes cast; 179 votes for the CTM; 29 votes for STIMAHCS; 2 abstentions.

## **5. Events Subsequent to the Election**

The FCAB convened hearings on September 23, 1997 and October 15, 1997 to review the election report and the objections filed by STIMAHCS regarding illegal conduct and inequitable election procedures. In decisions dated on November 11, 1997 and December 4, 1997, the FCAB confirmed that the CTM continued to represent the ITAPSA workers. The conduct of these proceedings and the substance of the decisions is discussed in detail below, with the FCAB actions subsequent to the election.

In separate proceedings held in October and November, 1997, the FCAB issued orders of reinstatement for all of the dismissed ITAPSA workers who had filed complaints.<sup>76</sup>

The first worker to be reinstated was Ruben Ruiz Rubio, who returned to work on October 7, 1997. He was returned to his regular position for three days, following which ITAPSA offered him a severance payment. When he refused, he was removed from his position and assigned to sit alone in a guard house at the entrance to the plant. In his view, he was isolated from the other workers and "not permitted to do productive work" as punishment for his union activity.<sup>77</sup>

On November 21, 1997, the FCAB ordered ITAPSA to reinstate a further group of ten workers.<sup>78</sup> On December 2, 1997, these employees returned to the plant, but security

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<sup>76</sup> Hernandez Alanis Supplementary Affidavit, Tab A-2, paragraph 7; Hernandez Lopez Supplementary Affidavit, Tab A-9, paragraph 6; Garcia Luna Supplementary Affidavit, Tab A-11, paragraph 5.

<sup>77</sup> Ruiz Rubio Supplementary Affidavit, Tab A-16, paragraph 6.

<sup>78</sup> Garcia Luna Supplementary Affidavit, Tab A-11, paragraph 4.

guards refused to allow them to enter. They were later told that the CTM had informed ITAPSA management that all of the dismissed workers, including Ruben Ruiz Rubio, were no longer members of the CTM because they had voted for STIMAHCS. Pursuant to an "exclusion clause" in the collective agreement, the CTM directed ITAPSA to dismiss them.<sup>79</sup> To date, ITAPSA has refused to reinstate any of the workers who were dismissed for supporting STIMAHCS. The FCAB has failed to take any action to enforce the reinstatement orders.

In the months since the election, the campaign of intimidation has also continued to rely on armed thugs to intimidate the STIMAHCS supporters. On December 15, 1997, a group of approximately 13 thugs attacked several STIMAHCS supporters at another factory owned by Echlin, American Brakeblock. When the STIMAHCS supporters arrived at American Brakeblock, they attempted to pass out leaflets and to inform the workers about the conduct of the representation election which was held at the ITAPSA plant. Almost immediately, the company doctor, Homero Martinez Valencia, and a CTM official, Antonio Contreras Lara, arrived and threatened that the STIMAHCS supporters would be beaten up if they did not leave the area.<sup>80</sup> The STIMAHCS supporters continued to pass out information.

Within a few minutes, approximately 13 thugs arrived in two taxis and chased the STIMAHCS supporters away from the factory. A number of STIMAHCS supporters were caught by the thugs and were beaten, punched and kicked. When some of the workers took refuge in a van, the thugs hurled rocks at the van, breaking the windshield. The workers were able to escape only because the police arrived.<sup>81</sup>

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<sup>79</sup> Hernandez Alanis Supplementary Affidavit, Tab A-2, paragraph 8; Hernandez Lopez Supplementary Affidavit, Tab A-9, paragraph 8; Garcia Luna Supplementary Affidavit, Tab A-11, paragraph 8; Ruiz Rubio Supplementary Affidavit, Tab A-17, paragraph 7.

<sup>80</sup> Ruiz Rubio Supplementary Affidavit, Tab A-17, paragraphs 6-12; Mendoza Hernandez Affidavit, Tab A-5, paragraphs 6, 8, 15.

<sup>81</sup> Ruiz Rubio Supplementary Affidavit, Tab A-17, paragraphs 13-17.



The attack was witnessed by Jose Luis Mendoza Hernandez, a confidential employee of American Brakeblock. As he was leaving work, he heard a CTM official, Antonio Contreras Lara, asking his brother, CTM legal counsel Alberto Contreras Lara, to "send me the group".<sup>82</sup> Later, Mendoza Hernandez and the STIMAHCS supporters saw Antonio Contreras Lara, Luis Espinoza de la Monteros, the head of industrial relations, and several company guards pointing out which workers to attack.<sup>83</sup> Antonio Contreras Lara yelled "kick all their asses."<sup>84</sup> Then, when the police arrived, the thugs were allowed into the plant, and the police indicated that they did not have the authority to enter the factory.<sup>85</sup> No further action was taken by the police.

Although he was not specifically targeted in the attack, Mendoza Hernandez was struck in the head with brass knuckles and fell unconscious.<sup>86</sup> Some time later, he was taken to the company doctor, Homero Martinez Valencia, who stitched his cuts, and urged him not to take any action against the company. Later, Luis Espinoza and Joseph Truss, the Director of American Brakeblock, offered to pay for his medical treatment if he agreed not to file a complaint against the company.<sup>87</sup>

Mendoza Hernandez was off work for 10 days, and he filed a complaint with the public ministry against American Brakeblock and the CTM. The first hearing into Mendoza Hernandez' complaint was on December 29, 1997. On that same day, he was dismissed from American Brakeblock without explanation.<sup>88</sup> To date, no sanctions have been

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<sup>82</sup> Mendoza Hernandez Affidavit, Tab A-5, paragraph 5.

<sup>83</sup> *Ibid.*, paragraphs 9, 10; Ruiz Rubio Supplementary Affidavit, Tab A-16, paragraphs 9, 12.

<sup>84</sup> Mendoza Hernandez Affidavit, Tab A-5, paragraph 10.

<sup>85</sup> *Ibid.*, paragraph 17; Ruiz Rubio Supplementary Affidavit, Tab A-17, paragraph 28.

<sup>86</sup> Mendoza Hernandez Affidavit, Tab A-5, paragraph 10.

<sup>87</sup> *Ibid.*, paragraphs 12, 13.

<sup>88</sup> *Ibid.*, paragraphs 19-21.

ordered against the thugs or against the agents of the CTM and American Brakeblock who directed the attack.

**D. THE RESPONSIBILITY OF THE FCAB**

**1. FCAB Actions During the Organizing Campaign**

On May 26, 1997, STIMAHCS filed a petition with the FCAB requesting "the right to administer the contract" at the ITAPSA plant. The petition asked the FCAB to hold an election to determine whether the majority of the workers wanted to be represented by STIMAHCS or by Section 15 of the CTM and the National Union of Mexican Workers in the Automotive and Allied Industries.<sup>89</sup>

The FCAB convened a panel to review the STIMAHCS application, and to administer the representation election, if ordered. FCAB panels are tripartite, with representatives from each of government, employer and union interests. In this case, the union representative on the panel was Miguel Angel Diosado Conejo, a CTM official with the Petrochemical Workers Union. The composition of the FCAB is discussed in detail below, with the analysis of the structure and jurisdiction of the FCAB.

The FCAB held a series of hearings to consider the petition. Legal counsel for ITAPSA and the CTM appeared at these hearings and raised a number of procedural objections to the STIMAHCS petition. At the first hearing, legal counsel for ITAPSA and the CTM failed to "enter their legal appearance," although STIMAHCS representatives observed that they were present at the hearing. At the second hearing, counsel for ITAPSA contended that STIMAHCS could not legally represent the workers at ITAPSA because of the nature of the work. The FCAB determined that this objection was without merit at a separate hearing which was convened to consider the objection.<sup>90</sup>

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<sup>89</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 7.

<sup>90</sup> *Ibid.*, paragraphs 8, 9.

The representation vote was finally scheduled for August 28, 1997. Procedural objections and administrative delays had given ITAPSA and the CTM more than three months to implement their campaign of intimidation which included surveillance, direct intimidation, physical violence, dismissals, and other forms of coercion. Although the FCAB was made aware of these tactics, no investigation was initiated and no sanctions were available.

At 11:30 a.m. on August 27, 1997, the day before the election was scheduled to occur, the CTM filed a petition with the FCAB by which it sought to nullify all of the previous proceedings. The CTM contended that it had not been properly served with the legal documents because the address at which service was effected was not the legal domicile of the CTM. In effect, the CTM sought to challenge the notice of proceedings, although it did not dispute that it was aware of and had participated in the proceedings.<sup>91</sup>

On receipt of the CTM petition, the FCAB immediately suspended the representation election scheduled for the following day. Neither STIMAHCS nor the workers were provided with notice of the CTM petition or an opportunity to make submissions or present evidence prior to the FCAB decision. In addition, the FCAB failed to notify either STIMAHCS or the workers that the election had been suspended.<sup>92</sup> Consequently, the workers who supported STIMAHCS were easily identified when they arrived early for the election, as discussed above. Later that same day, more than twenty workers were summarily dismissed. In this way, the postponement of the election and the manner in which it was postponed were of direct assistance to the campaign of intimidation mounted by ITAPSA and the CTM.

More than fifty workers were dismissed for supporting STIMAHCS between May 26,

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<sup>91</sup> *Ibid.*, paragraph 10.

<sup>92</sup> *Ibid.*, paragraphs 10-12.

1997 and August 28, 1997.<sup>93</sup> Such discriminatory dismissals are clearly prohibited under the Mexican Constitution, and the FCAB is the administrative body with the jurisdiction to order reinstatement. But in the present case, the FCAB failed to take any action until long after the representation election was held. The first worker was not reinstated until October 7, 1997, four weeks after the election.<sup>94</sup> The other workers were not reinstated until December 2, 1997, twelve weeks after the election.<sup>95</sup> The result of this delay was not only that the dismissed workers were prevented from campaigning for STIMAHCS, but also that the intimidation of the remaining workers was not remedied in advance of the election.

To summarize, the FCAB failed to take any action before the election to address the campaign of intimidation organized by ITAPSA and the CTM. Further, no action was taken with respect to the mass dismissals until weeks after the election. In its legal proceedings, the FCAB allowed procedural objections to delay the representation election for three months. The FCAB also granted a CTM petition to suspend the election at the last minute, and without providing STIMAHCS with notice or an opportunity to make submissions or present evidence. Finally, the FCAB also failed to notify STIMAHCS that the election was suspended, an omission which allowed ITAPSA and the CTM to identify and dismiss the workers who supported STIMAHCS. In this way, each of these actions served the interests of ITAPSA and the CTM.

## **2. FCAB Supervision of the Election**

The FCAB was responsible for the administration and supervision of the representation election, but refused to take any action to protect the physical safety and security of the workers who wished to vote, or to provide sanctions for the coercion of the workers and the irregularities in the voting process. Instead, the FCAB representatives

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<sup>93</sup> *Ibid.*, paragraph 14; Ruiz Rubio Affidavit, Tab A-15, paragraph 9; Najera Vazquez Affidavit, Tab A-21, paragraphs 5, 6.

<sup>94</sup> Ruiz Rubio Supplementary Affidavit, Tab A-16, paragraph 6.

<sup>95</sup> Garcia Luna Supplementary Affidavit, Tab A-11, paragraph 5.

simply noted all of the objections raised by STIMAHCS, and allowed the election to proceed under the control of ITAPSA and the CTM.

The first complaint made by the STIMAHCS representatives on September 9, 1997 was that armed thugs were intimidating the workers and refusing to allow STIMAHCS supporters to enter the ITAPSA plant to vote. The FCAB refused to restrain the thugs. Instead, a representative of the FCAB sanctioned this conduct by leaving the plant and recording the votes of STIMAHCS supporters in the street.<sup>96</sup> The General Secretary of STIMAHCS noted that "this is extremely irregular for union elections in Mexico."<sup>97</sup> As discussed above, the STIMAHCS supporters were required to cast their vote verbally amid a crowd of aggressive thugs hired by ITAPSA and the CTM.

A second protest was made to the FCAB just as the voting began. The CTM, STIMAHCS and ITAPSA representatives had met with the FCAB before the election and had agreed that three observers from each of the parties would be allowed into the voting room. Minutes after the agreement was reached, the voting room was filled with approximately twenty representatives of the CTM. The STIMAHCS representatives objected to the FCAB representatives, who responded that it was not their responsibility to enforce the rules established by the parties. The STIMAHCS representatives then requested that the election be suspended. The FCAB representatives refused.<sup>98</sup>

As the election progressed, the integrity of the voting was further and further compromised. As discussed above, the workers were threatened and intimidated by armed

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<sup>96</sup> Hernandez Alanis Affidavit, Tab A-1, paragraph 11; Hernandez Cruz Affidavit, Tab A-3, paragraph 12; Garcia Galicia Affidavit, Tab A-4, paragraph 12; Parada Leon Affidavit, Tab A-7, paragraph 11; Garcia Luna Affidavit, Tab A-10, paragraph 7; Hernandez Marquez Affidavit, Tab A-12, paragraph 13; Delgado Navarro Affidavit, Tab A-13, paragraph 13; Smucker Affidavit, Tab A-18, paragraph 10; Buendia Valverde Affidavit, Tab A-20, paragraph 14.

<sup>97</sup> Martinez Orozco Affidavit, Tab A-14, paragraph 34.

<sup>98</sup> *Ibid.*, paragraphs 23-25.

thugs before they entered the voting room. Once inside, the FCAB forced them to cast their vote verbally, while surrounded by an aggressive crowd of more than twenty hired thugs, CTM representatives and ITAPSA personnel. Furthermore, the voting list had been tampered with, and numerous non-employees were permitted to vote. Later, the CTM representatives prevented the STIMAHCS observers from even confirming that voters were on the list. At one point, the FCAB began to record votes of people who had not been checked against the voting list. A STIMAHCS representative was assaulted and beaten when he questioned the eligibility of some of the voters.

In this atmosphere of chaos and coercion, STIMAHCS counsel Arturo Alcalde pleaded forcefully with the FCAB to suspend the voting. He argued that the election could not be held under these illegal conditions. One of the FCAB representatives stated that the election should be suspended due to violence, but the other two representatives denied that there were problems.<sup>99</sup> The voting continued. According to the General Secretary of STIMAHCS, "at no time did the FCAB representatives take responsibility for the impartiality of the election process."<sup>100</sup>

As noted above, the FCAB representatives prepared a report of the election proceedings.<sup>101</sup> Legal counsel for STIMAHCS made a statement that detailed all of the incidents of intimidation and the inequities in the election procedures. The CTM responded, stating that none of the incidents had occurred. Although the FCAB representatives recorded these submissions, they made no findings of fact, did not record their own observations, and refused to allow the STIMAHCS representatives to submit witness statements, photographs or videotaped evidence with the report. The election report was subsequently submitted to the FCAB for review.

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<sup>99</sup> *Ibid.*, paragraph 31.

<sup>100</sup> *Ibid.*, paragraph 30.

<sup>101</sup> FCAB Election Report (September 9, 1997), Tab B-2; FCAB Election Report (Spanish), (September 9, 1997), Tab B-3.

### 3. FCAB Actions Subsequent to the Election

On September 10, 1997, the FCAB scheduled a hearing for September 23, 1997 to review the election report and to consider the allegations of illegal conduct and inequitable election procedures. However, neither STIMAHCS nor the ITAPSA workers were given notice of that hearing. Instead, the FCAB posted a notice of hearing within the FCAB offices. STIMAHCS representatives and the workers first learned of the hearing on September 25, 1997, after it had occurred, and details of what occurred at the hearing have not been made available.<sup>102</sup>

Upon learning that a hearing had occurred, legal counsel for STIMAHCS brought a motion before the FCAB to have the hearing declared void by reason of improper notice. The motion was heard on October 15, 1997, but STIMAHCS was not allowed an opportunity to make submissions or present evidence with respect to the violations of Mexican law which had occurred during the election.<sup>103</sup> Subsequently, the motion brought by STIMAHCS was denied in a decision dated November 11, 1997, in which the FCAB found that proper notice, as set out in Mexican law, was not required for the hearing which was held on September 23, 1997 because the FCAB did not know the names and addresses of the numerous workers whose interests were affected by the hearing.<sup>104</sup> The decision did not address the fact that, at a minimum, the FCAB could have notified STIMAHCS of the hearing, or that STIMAHCS had been denied the opportunity to present evidence.

Representatives of STIMAHCS filed an *amparo*, a type of appeal to the Federal District Court, claiming that the FCAB had violated the ITAPSA workers' constitutional right to organize by denying STIMAHCS the opportunity to present evidence of illegal

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<sup>102</sup> Submissions of Martinez Orozco (Spanish) (September 29, 1997), Tab B-4; Submissions of Rubio Gonzalez (Spanish) (October 15, 1997), Tab B-5; Submissions of Martinez Orozco (Spanish) (January 5, 1998), Tab B-11.

<sup>103</sup> *Ibid.*; FCAB Record of Proceedings (Spanish) (October 15, 1997), Tab B-7; see also Submissions of Ramirez Olvera (Spanish) (October 15, 1997), Tab B-6.

<sup>104</sup> FCAB Interim Decision (Spanish) (November 11, 1997), Tab B-8.

conduct and by failing to provide notice of the hearing held on September 23, 1997.<sup>105</sup> In a proceeding held on January 5, 1998, the Court held that the appeal was premature, and declined to consider the matter until such time as the FCAB issued a final decision.

In February 1998, the FCAB released its final decision respecting all matters related to the *recuento* petition filed by STIMAHCS and the objections filed by STIMAHCS regarding illegal conduct and inequitable election procedures. The FCAB final decision, which was dated December 4, 1997, determined that, because STIMAHCS had failed to appear and present evidence at the hearing held on September 23, 1997, it had not met the onus of proving that it had the support of the majority of the workers, or that there were any valid objection to the results of the election held on September 9, 1997. The FCAB concluded that the CTM continued to represent the ITAPSA workers.<sup>106</sup>

The FCAB final decision made no reference to the nature of the complaints filed by STIMAHCS, or to the election report prepared by the FCAB representatives on September 9, 1997. The decision also failed to address the fact that STIMAHCS was denied the opportunity to submit written statements, photographs or videotaped evidence on September 9, 1997, then was not given notice of the hearing held on September 23, 1997, and subsequently was denied the opportunity to make submissions or present evidence of any kind with respect to its complaint.<sup>107</sup> In effect, the FCAB repeatedly denied STIMAHCS an opportunity to present evidence, and then dismissed the petition because STIMAHCS did not prove its case.

The FCAB also found in its final decision that the objections filed by STIMAHCS were not in accordance with Mexican law because "objections must pertain to the workers

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<sup>105</sup> Submissions of Martinez Orozco (Spanish) (January 5, 1998), Tab B-11.

<sup>106</sup> FCAB Final Decision (December 4, 1997), Tab B-9; FCAB Final Decision (Spanish) (December 4, 1997), Tab B-10.

<sup>107</sup> *Ibid.*



present at the vote and not to the carrying out of procedure."<sup>108</sup> This finding suggests that even if STIMAHCS had been allowed to present evidence, the FCAB would have refused to consider its objections

It is notable that the FCAB decision which was released to STIMAHCS in February 1998 was dated December 4, 1997. Had the decision been released promptly, the *amparo* proceedings which were initiated by STIMAHCS, in November 1997 and which took place on January 5, 1998, would not have been premature. Instead, because the FCAB decision was delayed for two months, STIMAHCS was forced to file a second *amparo*. To date, no proceedings have been scheduled or convened pursuant to that application.

As discussed above, after the election was held, the FCAB also initiated proceedings to consider the claims of discriminatory dismissals for union activity. Hearings in these proceedings were not convened until months after the vote, in October and November, 1997. Although reinstatement orders subsequently were issued for all of the ITAPSA workers who had applied to the FCAB, none of these workers has been allowed to return to work because of the terms of an "exclusion clause" in the CTM/ITAPSA contract.<sup>109</sup> In effect, the workers were expelled from the CTM because they supported STIMAHCS, and then were dismissed by ITAPSA because they were no longer members of the CTM. To date, no further action has been taken by the FCAB to enforce its reinstatement orders, and no meaningful sanctions have been provided for the discriminatory dismissals of more than fifty workers who supported STIMAHCS.

Further, the FCAB has failed to take any action to address the continuing campaign of intimidation and violence that is being waged against the workers who support

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<sup>108</sup> *Ibid.*

<sup>109</sup> Hernandez Alanis Supplementary Affidavit, Tab A-2, paragraph 8; Hernandez Lopez Supplementary Affidavit, Tab A-9, paragraph 8; Garcia Luna Supplementary Affidavit, Tab A-11, paragraph 8; Ruiz Rubio Supplementary Affidavit, Tab A-17, paragraph 7.

STIMAHCS. As discussed above, armed thugs attacked STIMAHCS supporters at American Brakeblock on December 15, 1997. A witness observed that a CTM official summoned the "thugs" by phone and then the CTM and Echlin personnel directed their attack on the STIMAHCS supporters. When the police arrived, Echlin personnel allowed the thugs to enter company grounds. Later, a witness to the attack was dismissed for filing a public complaint. To date, no sanctions have been ordered has been taken against the thugs, Echlin, or the CTM.<sup>110</sup>

### **PART III – ANALYSIS**

#### **A. SOURCES OF MEXICAN LAW**

Mexican law is a product of both the laws of Mexico, found in the Mexican Constitution and domestic legislation, and international law, as set out in treaties which have been ratified by Mexico. This incorporation of international law into Mexican law is provided for by Article 133 of the Constitution, which states:

"The Constitution, the laws of the Congress of the Union which emanate therefrom, and all treaties made, or which shall be made in accordance therewith by the President of the Republic, with the approval of the Senate, shall be the Supreme Law throughout the Union."

Moreover, international treaties are specifically incorporated into the labour law of Mexico by Article 6 of the Federal Labour Law <sup>111</sup> ("FLL"), which states:

"The laws and treaties entered into and approved in the terms of Article 133 of the Constitution, shall be applicable to the employment relations in all respects that are beneficial to workers from the effective date of such law or treaty."

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<sup>110</sup> Mendoza Hernandez Affidavit, Tab A-5, paragraph 21; Ruiz Rubio Supplementary Affidavit, Tab A-17, paragraph 30.

<sup>111</sup> Ley Federal del Trabajo.

The relationship between domestic legislation and international treaties has been a matter of debate among legal scholars. The U.S. NAO has reviewed this debate, and concluded that the prevailing view is of a hierarchy in which international treaties are superior to federal laws where there is a conflict, provided the treaty was ratified in accordance with Mexico's constitution.<sup>112</sup>

Mexico has ratified numerous international treaties that pertain to freedom of association, the right to organize, and other principles affecting labour law. The ratified treaties which are relevant to the present application include: ILO Convention 87 on Freedom of Association and Protection of the Right to Organize; the International Covenant on Civil and Political Rights; the Universal Declaration of Human Rights; the American Convention on Human Rights; and the International Covenant on Economic, Social and Cultural Rights.

Within Mexico's domestic law, the legal framework for labour law is provided by Article 123 of the Constitution. Jurisdiction over labour matters is divided between the federal government of Mexico and the States. The federal government has the jurisdiction to enact labour legislation, which then applies throughout Mexico. The States, however, have jurisdiction over the implementation of labour law, with the exception of certain matters which are reserved to federal jurisdiction. The matters which are exclusively within the federal sphere include the following: disputes affecting two or more States; federal contracts or administration; occupational safety and health; and certain manufacturing industries. The industrial manufacturing undertaken at the ITAPSA plant is exclusively within federal jurisdiction under Article 527 of the FLL.

Article 123 of the Constitution provides for the codification of Mexico's domestic labour law in the FLL. Article 123 also sets out numerous principles which are central to Mexico's labour law. As examples, Article 123, Section XVI expressly guarantees the right

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<sup>112</sup> U.S. NAO Public Report of Review on Submission 9601, Tab C-4, at p. 22.

of workers to organize. Article 123, Section XXII, provides protection from dismissal for exercising the right to organize. The specific provisions of the FLL, the Constitution, and international treaties which are relevant to the present communication are discussed in detail below.

## **B. FCAB STRUCTURE AND JURISDICTION<sup>113</sup>**

Article 123 of the Mexican Constitution establishes a system of state and federal tribunals to resolve all labour disputes. The tribunals within both jurisdictions are termed conciliation and arbitration boards (CABs) and conciliation boards (CBs). As noted above, the jurisdictions of the state boards and the federal boards are determined by the nature of the industry, or the scope of the dispute. The industrial manufacturing undertaken at the ITAPSA plant is within federal jurisdiction. As a result, all disputes arising at the ITAPSA plant, including matters connected to union representation, are heard by the federal CB and CAB.

The jurisdiction of the State, or local CBs ("LCBs") and the Federal CB ("FCB") is provided for in the FLL. Under Article 600 of the FLL, the responsibilities of CBs are limited to providing conciliation services, receiving claims, gathering evidence for CAB proceedings, and assisting the CABs in the performance of their duties. CBs do not act as adjudicative bodies, except for a specific range of benefit disputes.

The general jurisdiction of the State, or local, CABs ("LCABs") and the Federal CAB ("FCAB") over labour law matters is provided for in section XX of Article 123 of the Constitution, which states:

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<sup>113</sup> For a detailed discussion of the FCAB and Mexican labour law, see National Law Centre for Inter-American Free Trade, *"Labour Law Enforcement in Mexico and the Role of the Federal and State Conciliation and Arbitration Boards"* (U.S. Department of Labour, 1994), Tab D-1; Leticia Cuieya, *"Analysis of Submissions Nos. 940003 and 940004"* (U.S. Department of Labour, 1995), Tab D-2; Paul A. Curtis and Alfredo Gutierrez Kirchner, *"Questions on Labour Law Enforcement in Mexico and the Role of the Federal and State Conciliation and Arbitration Boards"* (U.S. Department of Labour, undated), Tab D-3.

"Differences of disputes between capital and labour shall be subject to the decisions of a conciliation and arbitration Board, consisting of an equal number of representatives of workers and employers, with one from the government."

Section XXI of Article 123 further provides that the jurisdiction of CABs is exclusive:

"If an employer refuses to submit his differences to arbitration or to accept the decision rendered by the Board, the labour contract shall be considered terminated and he shall be obligated to indemnify the worker..."

The composition of the FCAB is regulated by Section XII of the FLL, which provides for one representative from each of government, union and employer interests on each adjudicative panel. The government representative is the President of the FCAB, who is appointed by the President of Mexico and serves at pleasure, with a maximum term of six years. The labour and management members of the Board are elected to the FCAB in conventions held every six years by their respective organizations as set out in Article 648 of the FLL. The members' appointments are for a term of six years on a part-time basis.

The FLL also provides for enforcement of CAB decisions. The President of each CAB has the authority to determine appropriate enforcement measures. Such measures may include the garnishment of property for payment of an award.

Decisions of a CAB are final. Article 848 of the FLL provides that the CABs cannot accept appeals, and cannot reconsider or overturn previous CAB decisions. For this reason, CAB decisions can be challenged only by application to the Federal District Courts, the Federal Courts of Appeal, and the Mexican Supreme Court. The grounds for appeal are constitutional, as provided for by the process of *amparo*, set out in Articles 103 and 107 of the Mexican Constitution, and regulated by the Amparo Law. The principal objectives of the *amparo* are to regulate compliance with individual guarantees in the Constitution. As such, the *amparo* is based on a claim that governmental authority has violated constitutional rights through the application of a law or by judicial decision.

### **C. THE FAILURE TO ENFORCE MEXICAN LAW**

Article 3 of the NAALC sets out clear obligations of the signatories to the NAALC with respect to "Government Enforcement Action." Under the terms of Article 3(1), Mexico is required to "promote compliance with and effectively enforce its labor law through appropriate government action..." Article 3(1)(b) provides that such government action includes "investigating suspected violations." Similarly, Article 3(1)(g) states that government action includes "initiating in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law." Last, Article 3(2) provides that authorities will "give due consideration...to any request... for an investigation of an alleged violation of the Party's labor law."

The Petitioners submit that the events surrounding the representation election held at the ITAPSA plant indicate that Mexico and the FCAB have failed to fulfill the obligations created by Article 3 of the NAALC. The FCAB has repeatedly failed to initiate timely proceedings or take any action to enforce Mexican laws that protect workers' right to organize, protect workers from violence and intimidation, and guarantee fair election procedures. Further, Mexico and the FCAB have failed to effectively enforce prohibitions on discriminatory dismissals.

#### **1. The Right to Organize**

Freedom of association and the right to organize are principles that are central to Mexican labour law. Both principles are guaranteed expressly by a number of provisions within Mexico's domestic law and ratified international treaties.

Freedom of association is protected by Article 19 of the Mexican Constitution, which states: "the right to association or to hold meetings for any legal purpose cannot be curbed." The Constitution offers similar protection for the right to organize, in Article 123, Section XVI, which states:

"Workers and employers shall each have the right to unite in defense of their respective interests, forming trade unions, professional associations, etc."

Articles 354, 357 and 358 of the FLL also provide for freedom of association and the right to organize. Article 357 states that "workers and employers have the right to form unions without having to obtain prior authorization." Article 358 provides that "no one can be compelled to become a member or not."

ILO Convention 87 provides similar protection for freedom of association and the right to organize. The stated purpose of the Convention is "the right, freely exercised, of workers and employers, without distinction, to organize for furthering and defending their interests." Convention 87 further provides that:

"Workers and employers, without distinction whatsoever, have the right to establish and to join organizations of their own choosing with a view to furthering and defending their respective interests."

The right to organize has been similarly enshrined in several international agreements ratified by Mexico:

"Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."<sup>114</sup>

"Everyone has the right to form and to join trade unions for the protection of his interests."<sup>115</sup>

"Everyone has the right to associate freely for ideological, religious, political, labour, social, cultural, sports, or other purposes."<sup>116</sup>

"The States Parties to the present Covenant undertake to ensure... the right of everyone to form trade unions and join the trade union of his choice."<sup>117</sup>

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<sup>114</sup> International Covenant on Civil and Political Rights, Article 22.

<sup>115</sup> Universal Declaration of Human Rights Act, Article 23(4).

<sup>116</sup> American Convention on Human Rights, Article 16.

<sup>117</sup> International Covenant on Economic, Social and Cultural Rights, Article 8(1).

The ILO has specifically addressed the importance of the right to organize in the context of government efforts to impose unitary labour organizations or trade union monopolies. The ILO recognizes that it is to the advantage of workers to avoid a proliferation of competing labour organizations, but that it is important to distinguish between voluntary groupings of workers or unions as distinct from unity imposed by law or government pressure.<sup>118</sup> The ILO General Survey published in 1994 concluded on the issue of trade union monopoly and trade union diversity that "trade union unity directly or indirectly imposed by law runs counter to the standards expressly laid in the Convention."<sup>119</sup>

Thus, it is clear that Mexican law guarantees freedom of association and the right to organize in principle. However, the Petitioners submit that the FCAB has repeatedly failed to effectively enforce the provisions of Mexican law which protect those rights. This failure to enforce the law violates Article 3 of the NAALC, as well as fostering a union monopoly which further impinges on the right to organize.

## **2. Protections from Violence and Intimidation**

Mexican labour law recognizes that, if the right to organize is to be effective, it must be supported by protection from intimidation and violence. Article 133 of the FLL expressly prohibits the following conduct:

"forcing workers through coercion or any other means to join or withdraw from a union, or to vote for a determined candidate;...  
carrying weapons in the interior of the workplace..."

International law, as incorporated by Mexico, also provides protection from violence for workers. Article 3 of ILO Convention 87 provides that workers have a right "to elect

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<sup>118</sup> Cited by U.S. NAO Public Report of Review on NAO Submission 9601, Tab C-4, at p. 27.

<sup>119</sup> *Ibid.*, at p. 29.



their representatives in full freedom." Similarly, the ILO has stated that:

"Trade union rights can only be exercised in a climate that is free from violence, pressure, or threats of any kind against trade unionists; it is for governments to assure that this principle is respected."<sup>120</sup>

In the present case, it is clear that agents of ITAPSA and the CTM coerced the workers into voting for the CTM. Throughout the organizing drive, workers who supported STIMAHCS were placed under surveillance, assigned more difficult and dangerous work duties, and threatened with violence and dismissal. On the day of the election, there were more than 150 armed thugs patrolling the grounds. All of the workers were forced through a gauntlet of thugs hurling stones, bottles, and threats of violence. Many were threatened with rape or murder, and one STIMAHCS representative was assaulted and beaten.

The Petitioners submit that the FCAB violated Article 3(1) of the NAALC by failing to promote compliance with and effectively enforce the above-noted provisions of Mexican law which protect workers from violence and intimidation. The FCAB representatives were aware of all of the illegal conduct, and refused to restrain the thugs, or impose any sanctions to remedy the intimidation of the voters. Further, the FCAB required the workers to cast their votes verbally and publicly in a room crowded with CTM and ITAPSA representatives and hired thugs, all of whom threatened violent retaliation. Thus, not only did the FCAB fail to take action to enforce Mexican law, but it also directly assisted the campaign of intimidation by exposing the workers to intimidation and retaliation.

The Petitioners further submit that the FCAB violated Articles 3(1)(b)(g) and 3(2) by failing to investigate suspected violations, initiate proceedings, or give due consideration to allegations of illegal conduct and inequitable election procedures. Although the FCAB was provided with details of all of the illegal conduct of the CTM and ITAPSA representatives, the FCAB representatives refused to suspend the election or initiate an

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<sup>120</sup> ILO, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (3rd Edition, 1985), paragraph 70.

investigation. Further, when the election report was prepared, the FCAB representatives merely noted the objections, and did not record their own observations or reach findings of fact. The FCAB representatives even refused to receive evidence in the form of witness statements, photographs and videotapes. Further, following the election, STIMAHCS was denied notice of FCAB proceedings and an opportunity to make submissions and present evidence with respect to violations of Mexican law. These denials of due consideration are discussed in greater detail below.

### **3. Prohibitions on Discriminatory Dismissals**

It is clear that Mexican law does not permit employers to dismiss workers for exercising their right to organize. The Mexican Constitution recognizes that dismissals for union activity obstruct workers' right to organize, and it provides clear sanctions for such discriminatory dismissals under Article 123, Section XXII which states in part:

"The employer who discharges a worker without just cause, or for having joined an association or a union... shall be obligated, at the worker's choice, to fulfill the employment contract or to indemnify the worker..."

The ILO has considered the issue of dismissals for union activity, and has emphasized the role of government in protecting workers from this type of discrimination. The ILO states:

"Governments should, where necessary, take measures to ensure that workers are protected against acts, including dismissal, which are likely to provoke, or have as their object, anti-union discrimination in respect of employment of workers."<sup>121</sup>

Although Mexican law prohibits discriminatory dismissals, Mexico's enforcement of this law has proven consistently ineffective. There are a number of factors behind this failure, the first of which is the chronic delays in CAB proceedings. None of the ITAPSA workers, for example, was ordered reinstated before October 7, 1997, four weeks after the

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<sup>121</sup> *Ibid.*, paragraph 542.

election and four months after ITAPSA had begun to dismiss STIMAHCS supporters. The majority of workers did not return to work until December 2, 1997. In this way, the mass dismissals were allowed to affect the outcome of the election because the workers who supported STIMAHCS were prevented from campaigning for STIMAHCS before the election, and because workers who were not dismissed were intimidated by the clear penalty imposed on STIMAHCS supporters.

A second and related problem with the enforcement of these provisions is that dismissed workers frequently cannot afford to assert their right to reinstatement. Workers are forced to choose between receiving immediate severance payments, or waiting for the eventual resolution of their claims by the CABs. In its Public Report on Submission No. 940003, the U.S. NAO considered this dilemma, noting that workers "often feel pressured to sign voluntary resignation in order to receive severance rather than risk receiving nothing..."<sup>122</sup> The U.S. NAO determined that a "very high percentage" of Mexican workers elects to claim severance pay rather than assert their right of reinstatement, and concluded that "workers generally do not have the financial resources to pursue reinstatement before the CABs, often opting for the settlement of their complaints in return for money..."<sup>123</sup>

The most significant impediment to effective enforcement of Mexico's laws prohibiting discriminatory dismissals is the application of "exclusion clauses," such as that found in the CTM/ITAPSA collective agreement, or union contract. Exclusion clauses are express provisions in collective agreements that require employers to dismiss employees who cease to be members of the union, whether by resignation or expulsion. The policy reasons advanced in support of exclusion clauses are that they strengthen the union movement by preventing a plurality of weak unions, and by protecting unions from declining membership. However, Mexico does not adequately protect workers from being expelled and subsequently fired on grounds that are illegitimate. Voting for an independent union, for example, may

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<sup>122</sup> U.S. NAO Public Report of Review on Submission No. 940003, Tab C-2, at p. 26.

<sup>123</sup> *Ibid.*, at p. 27; U.S. NAO Public Report of Review on Submissions 940001 and 940002, Tab C-1, at p. 29.

lead to expulsion and then legal dismissal under an exclusion clause. This is what occurred at the ITAPSA plant. In this way, the failure of Mexico to ensure that exclusion clauses are not exercised so as to inhibit freedom of association creates a critical weakness in the protections for the right to organize.

It is clear that exclusion clauses work to the benefit of established unions, such as the CTM, which has negotiated exclusion clauses in all of its collective agreements. In practice, however, exclusion clauses also work to the advantage of employers. One report prepared by the U.S. Department of Labour specifically addresses this issue:

"In Mexico official unions usually team up with the employers and use the 'exclusion clause' to prevent other, more independent and aggressive unions from convincing the workers to repeal their association with the official union in favor of a new union."<sup>124</sup>

Mexican law provides few means by which workers may resist the application of an exclusion clause. The first is by an internal union resolution to either renounce the Board of Directors of the union under Article 371, Section VIII of the FLL, or to dissolve the union under Article 379, Section 1 of the FLL. However, both of these resolutions require a two-thirds majority of all union members. The result is that these protections have little effect where only a small number of members are affected by an exclusion clause. But regardless of the numbers affected, the resolution procedure is ineffective without enforceable guarantees of fair election procedures and protection from intimidation and coercion.

The FLL regulates expulsions from unions by requiring unions to follow certain minimum expulsion procedures. These procedures include: stating express motives and reasons for the expulsion; organizing a union assembly; ensuring the right to a hearing, defence and evidence before the assembly; and the requirement of a two-thirds majority for

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<sup>124</sup> Curtis and Kirchner, *"Questions on Labour Law Enforcement in Mexico"*, Tab D-3, at p. 45.

expulsion.<sup>125</sup>

In the present case, none of the ITAPSA workers indicates that he or she was told how the exclusion clause was being applied. Because Mexican labour laws do not require unions to issue or file their constitutions, by-laws, collective agreements or financial reports, none of the ITAPSA workers was provided with the means with which to confirm the CTM expulsion procedures. It is clear, however, that the CTM did not meet any of the minimum expulsion procedures established by the FLL. At a minimum, none of the workers were given an opportunity to adduce evidence of defend themselves at a hearing before an ad hoc union assembly.

It is not clear what legal mechanisms are available for workers to challenge their expulsion from the CTM. The U.S. NAO reviewed this issue and determined that "the FLL appears to leave the conduct of internal union affairs largely in the hands of the unions themselves."<sup>126</sup> The U.S. NAO further noted that the available evidence indicates that the "sole remedy" against a union for violation of its governing instruments is within the union. The U.S. NAO concluded that it was unable to determine if workers had "any viable recourse against improper union actions."<sup>127</sup>

To conclude, workers in Mexico have a right of reinstatement if their employment is terminated because they exercise their right to organize, but the right of reinstatement is limited in practice by the workers' inability to survive economically until the lengthy process of reinstatement works its course. Further, where workers exercise their right to organize against the interests of another union, they have no effective right to reinstatement because of the operation of exclusion clauses. Last, Mexican law establishes minimum procedures

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<sup>125</sup> Cuieya, *"Analysis of Submissions 940003 and 940004"*, Tab D-2, at pp. 25-27.

<sup>126</sup> U.S. NAO Public Report of Review on Submission No. 940003, Tab C-2, at p. 28; U.S. NAO Report on Ministerial Consultations on Submission 94003, Tab C-3, at p. 12.

<sup>127</sup> *Ibid.*, at p. 29.

which must be followed before exclusion clauses are applied, but it is unclear what, if any, avenues are available to enforce these provisions. What is clear, however, is that the ITAPSA workers supported an independent union and were dismissed as a consequence. It is similarly clear that the FCAB has taken no action to enforce its orders of reinstatement, thereby sanctioning these discriminatory dismissals.

#### **4. Guarantees of Fair Election Procedures**

The integrity of the voting list is fundamental to a fair election. Articles 895 and 931 of the FLL both provide for conditions under which a representation election must be conducted. The conditions include: that the FCAB give notice of the place, date and time of the election; that only company employees who present themselves at the voting site are eligible to vote; and that the FCAB must undertake a hearing to take evidence about workers alleged during the vote to be non-employees.

In the present case, the FCAB failed to enforce Article 931 by not ensuring that prospective voters were ITAPSA employees properly eligible to vote. The evidence indicates that the voting list included workers who were eligible to vote, confidential employees who were not eligible to vote and some people who were not employees of ITAPSA at all. Further, agents of the CTM escorted numerous people into the voting room, and completely controlled access to the voting list. There was no way for the STIMAHCS representatives to confirm who was properly permitted to vote. The FCAB failed to take any action to address these violations of election procedures set out in the FLL.

A further breach of Article 931 occurred when STIMAHCS representatives protested that non-employees were being permitted to vote. Rather than hold a hearing, as required by Article 931, the FCAB merely took statements before and after the election from each of the representatives. The FCAB representatives refused to receive supporting evidence, failed to reach any findings of fact, and did not record their own observations. Instead, the FCAB representatives prepared a report for the FCAB that summarizes the allegations made by the STIMAHCS representatives and the categorical denials from the CTM and

ITAPSA representatives.

The Petitioners submit that the FCAB violated Article 3(1) of the NAALC by failing to effectively enforce Mexican laws that provide for fair election procedures, and that require hearings to consider alleged violations of Mexican law. Further, the Petitioners submit that the FCAB has violated Articles 3(1)(b), (g) and 3(2) of the NAALC by failing to investigate alleged violations of Mexican law, and by failing to initiate timely proceedings to seek appropriate sanctions.

## **5. Occupational Safety and Health Standards**

The Labour Inspection Department<sup>128</sup> ("DIT"), under the direction of the Labour Inspector, is responsible for ensuring compliance with Mexican labour laws and regulations, including safety and health laws and standards. The responsibilities of the DIT include making workers and employers aware of the laws and regulations, and giving notice of violations.

Article 132, Sections 16-19 of the Mexican Constitution provide for occupational health and safety standards. Article 16 requires the installation of equipment in the following circumstances:

"in accordance with principles of health and safety, in factories, workshops, offices, and other places in which work is performed, in order to prevent risk at work and injury to workers, as well as adopting the necessary means to avoid contaminants which exceed the maximum which is permitted by regulation and instruction of the competent authorities."

In the present case, it is not clear what efforts, if any, were taken by the DIT to promote compliance or effectively enforce the safety and health provisions of the Constitution, and other relevant legislation. What is clear from the affidavits of the workers is that the ITAPSA plant is dangerous, that many serious accidents have occurred, that the

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<sup>128</sup> Departamento de Inspeccion del Trabajo.

plant is contaminated with asbestos, and that workers are frequently required to work with little or no protective equipment.

The Petitioners submit that the working conditions discussed above must constitute a violation of Mexican law. The failure of the Mexican authorities to promote compliance with and effectively enforce the law must be considered in large part as due to the failure of the CTM to support the workers or to initiate proceedings. In this sense, the safety and health protections afforded to Mexican workers are ineffective without meaningful guarantees of the right to organize a union of their choice. Consequently, the Petitioners request that the NAO demand that the Mexican authorities initiate appropriate proceedings to ensure compliance by ITAPSA with Mexican laws protecting safety and health.

**D. THE FAILURE TO ENSURE PROCEEDINGS ARE FAIR, EQUITABLE AND TRANSPARENT**

The Petitioners submit that Mexico and the FCAB have violated Article 5(4) of the NAALC, which provides that Mexico "shall ensure that tribunals... are impartial and independent and do not have any substantial interest in the outcome of the matter." As discussed below, the FCAB representatives who are nominated by employer and union organizations commonly have personal interests in the outcome of representation elections, and the FCAB is historically influenced by policies which favour the CTM over independent unions. Further, the inability of the FCAB to protect the safety and security of the ITAPSA workers who wished to vote also indicates that the FCAB representatives were vulnerable to intimidation and coercion by the armed thugs hired by ITAPSA and the CTM.

The Petitioners further submit that Mexico and the FCAB have violated Article 5(1) of the NAALC. Under Article 5(1), Mexico is obligated to ensure that its administrative and labour tribunal proceedings are "fair, equitable and transparent." The specific guarantees provided by Article 5(1) and 5(2) include "due process of law", the entitlement "to present information, or evidence", and the "opportunity to be heard."



Article 5(1) of the NAALC also requires Mexico to provide that proceedings "do not entail unreasonable charges or time limits or unwarranted delays." Similarly, Article 5(2) requires that final decisions be "made available without undue delay" and that Article 3(1)(g) provides that proceedings shall be initiated "in a timely manner."

In the present case, the Petitioners submit that Mexico and the FCAB failed to ensure that FCAB proceedings were fair, equitable and transparent. STIMAHCS was repeatedly denied due process of law, notice of proceedings, and the opportunity to present information and evidence. Also, the conduct of the election was manifestly unfair and inequitable. Further, FCAB proceedings were characterized by persistent and unwarranted delays, all of which served the interests of ITAPSA and the CTM.

**1. Bias and Conflict of Interest**

The characteristics of impartiality and independence which are provided for in Article 5(4) of the NAALC are critical to an adjudicative system. There are several factors, however, which prevent the FCAB from being either impartial or independent where the interests of the CTM are affected. The first of these is the manner in which appointments are made to the FCAB. The second factor is the close and mutually dependent relationship between the government and the CTM and the dominant party in the Mexican government.

Union representatives are appointed to the FCAB following an election held at a union convention. In practice, the vast majority of union representatives on the FCAB are elected officials from the CTM. Further, most union representatives continue to work with the CTM during the term of their appointments, which are on a part-time basis only. Union representatives are further reliant on the CTM if they wish to return to their careers with the CTM when their FCAB terms of office expire.

In the context of applications to CABs from independent unions, the U.S. NAO has found that:

"the labour representative on the FCAB generally represents the incumbent or majority union -- in the instant case a CTM affiliate. Therefore, at least one member of the CAB had a competing interest with the independent union seeking registration."<sup>129</sup>

As noted above, the union representative on the FCAB panel which adjudicated the STIMAHCS proceedings was Miguel Angel Diosdado Conejo, a CTM official with the Petrochemical Workers' Union. It is not presently known whether he has continued to work with the CTM during the term of his appointment, but the Petitioners submit that his allegiance to the CTM, and the historic support given by union representatives to CTM interests, is sufficient to base a reasonable apprehension of bias with respect to the union representative on the FCAB.

A second factor contributing to the bias of the FCAB on issues involving union representation is the close and mutually dependent relationship between the CTM and the dominant party in the Mexican government, the PRI. This relationship was studied by the U.S. Department of Labour, which found that "the CTM is the most important sector of the government party" and "the main force behind the government's party."<sup>130</sup> The Report on Ministerial Consultations held pursuant to U.S. NAO Submission 940003 found that the CTM is "allegedly closely linked to the Institutional Revolutionary Party ("PRI"), the dominant political party in Mexico."<sup>131</sup>

Mexican law does not create a distinction between official and unofficial unions. All unions have the same formal rights and obligations. However, as the U.S. NAO has concluded, government preference for and support of official unions has had a practical

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<sup>129</sup> U.S. NAO Report on Ministerial Consultations on Submission 940003, Tab C-3, at p. 10.

<sup>130</sup> Curtis and Kirchner, *"Questions on Labour Law Enforcement in Mexico"*, Tab D-3, at pp. 47, 34.

<sup>131</sup> U.S. NAO Report on Ministerial Consultations on Submission 940003, Tab C-3, at p. 9.

effect on the enforcement of labour law in Mexico.<sup>132</sup> The U.S. Department of Labour describes the relationship in these terms:

"it should be noted that official unions (meaning the CTM) in practice have received a privileged treatment from the CABs and other labor authorities... As a quid pro quo, the CTM has traditionally behaved as an extremely docile labor force vis a vis the government."<sup>133</sup>

One example of the practical support given to the CTM by the PRI is the ongoing acceptance of exclusion clauses. The U.S. Department of Labor reviewed the relationship in the context of exclusion clauses and concluded that the President of Mexico and the majority of the Congress of Mexico have a vested interest in exclusion clauses because the threat of exclusion by the CTM affects how workers vote in political elections.<sup>134</sup>

Representation elections are a second issue in which PRI support for the CTM has had a discernible effect on the enforcement of Mexican labour law. Again, the U.S. Department of Labour has examined the issue and states that:

"a labour federation such as the FAT is considered to be a radical and unwelcome organization and its unions and leaders would be looked upon as aggressive and destabilizing forces. Therefore, not only would the FAT not be accepted, but in any conflict with the CTM, or any other friendly union, if legally possible, the CABs would favor this last union."<sup>135</sup>

In addition, another form of bias may have affected the conduct of the representation election. The FCAB representatives who administered and supervised the election had a substantial personal interest in the outcome of the matter because of the climate of violence and intimidation. The FCAB representatives were not themselves safe from the armed

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<sup>132</sup> *Ibid.*, at pp. 9-10; U.S. NAO Public Report of Review on Submission No. 940003, Tab C-2, at p. 32.

<sup>133</sup> Curtis and Kirchner, *"Questions on Labour Law Enforcement in Mexico"*, Tab D-3, at p. 34.

<sup>134</sup> *Ibid.*, at p. 47.

<sup>135</sup> *Ibid.*, at p. 34.

thugs hired by the CTM and ITAPSA. Although evidence with respect to the personal experience of the representatives is not available, it would seem likely that the decisions of the FCAB representatives not to enforce the law, restrain the thugs, initiate an investigation, or suspend the election, were influenced by concerns for their own safety.

To conclude, the Petitioners submit that Mexico and the FCAB have violated Article 5(4) of the NAALC by failing to ensure that the FCAB is impartial, independent, and free of any substantial interest in the outcome of the matter. Specifically, the factors which support an apprehension of bias include: the appointment of a CTM official to the FCAB panel; the close and mutually dependent relationship between the CTM and the PRI; the historic preference shown by the FCAB for the CTM over independent unions; and the vulnerability of the FCAB representatives who administered the election to threats and violence from the thugs hired by ITAPSA and the CTM.

## **2. Denial of Due Process and the Opportunity to be Heard**

Article 5(1)(a) of the NAALC requires Mexico to ensure that administrative and labour tribunal proceedings "comply with due process of law." As a concept of law, due process encompasses a number of principles related to fairness and justice. One of these principles is the provision of reasonable notice to parties whose interests are affected. Another principle is the provision of the opportunity to be heard. The opportunity to be heard is also guaranteed by Article 5(1)(c) of the NAALC, which provides that the parties to administrative and labour tribunal proceedings "are entitled to support or defend their respective positions and to present information or evidence..." Similarly, Article 5(2)(c) provides that tribunal decisions will be "based on information or evidence in respect of which the parties were offered the opportunity to be heard."

The Petitioners submit that the FCAB failed to comply with due process by failing to provide STIMAHCS with notice and an opportunity to be heard with respect to the postponement of the first representation election, and with respect to the hearing convened on September 23, 1997 to review the objections filed by STIMAHCS regarding illegal

conduct and inequitable election procedures.

The first denial of due process was the failure of the FCAB to provide STIMAHCS with notice and an opportunity to be heard with respect to the suspension of the representation election scheduled for August 28, 1997. As discussed above, the CTM filed an application on August 27, 1997 seeking to have the STIMAHCS petition for a representation election declared a nullity because proper service had not been effected. It was not suggested that the CTM had not participated in the proceedings to date, only that service was not effected at its legal domicile. The FCAB immediately postponed the election without providing STIMAHCS with notice or an opportunity to make submissions. Further, the FCAB failed to notify STIMAHCS that the election was postponed. Consequently, ITAPSA and the CTM were able to easily identify and dismiss the workers who supported STIMAHCS when they arrived to vote.

A second occasion on which the FCAB failed to provide notice to STIMAHCS and the workers occurred following the representation election. As noted above, the STIMAHCS representatives were permitted to file their objections with the FCAB representatives who administered the election. The written report was returned to the FCAB for review. On September 23, 1997, the FCAB convened a hearing to consider the allegations of illegal conduct and inequitable election procedures. But again, no notice was provided to STIMAHCS or the ITAPSA workers. Instead, the FCAB posted a notice of hearing in the FCAB offices.

The STIMAHCS representatives and workers only learned of the hearing on September 25, 1997, two days after it had been held. On October 15, 1997, STIMAHCS brought an application to have the hearing declared void by reason of improper notice, but, in a decision dated November 11, 1997, the FCAB found that STIMAHCS was not entitled to notice because there were numerous interested parties whose names were unknown to the FCAB. The FCAB decision did not address the fact that, at a minimum, the FCAB could have notified STIMAHCS of the hearing.

The failure of the FCAB to provide notice to STIMAHCS, and the subsequent determination that notice was not required, both stand in sharp contrast to the approach taken by the FCAB to notice requirements where CTM interests were affected. Prior to the election, based only on a claim by the CTM that it had been served notice at an address that was not its legal domicile, the FCAB acted immediately to suspend the election. Then the FCAB failed to provide notice of its decision to STIMAHCS, causing the dismissal of more than 20 STIMAHCS supporters.

The FCAB also repeatedly denied STIMAHCS an opportunity to be heard. First, the FCAB representatives did not allow STIMAHCS to make submissions regarding the petition brought by the CTM on August 27, 1997. Then, on September 9, 1997, the FCAB representatives did not allow STIMAHCS to present evidence with respect to its allegations of illegal conduct and inequitable election procedures. Although STIMAHCS representatives were permitted to make a statement for the FCAB election report, they were not permitted to submit evidence in the form of witness statements, photographs, or videotapes.

A third denial of the opportunity to be heard occurred as a direct result of the failure of the FCAB to provide notice of the hearing held following the election. As discussed above, on September 23, 1997, a hearing was held without notice to STIMAHCS or the ITAPSA workers. In a hearing held on October 15, 1997, STIMAHCS objected that it had been denied notice and an opportunity to be heard at the hearing of September 23, 1997. That objection was dismissed by a decision dated November 11, 1997, but it is critical to note that at the hearing of October 15, 1997, STIMAHCS was again denied an opportunity to make submissions or present evidence with respect to its allegations of illegal conduct and inequitable election procedures. Consequently, when the FCAB issued its final decision dated December 4, 1997, it did so without ever allowing STIMAHCS an opportunity to be heard. And in that final decision, the FCAB concluded that there was no evidence of illegal conduct specifically because STIMAHCS had failed to present evidence at the hearing of September 23, 1997, in spite of the fact that it was the FCAB that denied STIMAHCS

notice of the hearing, and then repeatedly refused to allow STIMAHCS an opportunity to make submissions or present evidence.

The Petitioners submit that the failure of the FCAB to provide notice and an opportunity to be heard or to present information or evidence is a violation of Articles 5(1)(a), (c), 5(2)(c) and 3(2) of the NAALC.

### **3. Inequitable Election Procedures**

Article 5(1) of the NAALC provides a general guarantee that administrative and labour tribunal proceedings will be fair, equitable, and transparent. The Petitioners submit that the conduct of the representation election which was held at the ITAPSA plant on September 9, 1997 was manifestly unfair and inequitable. As discussed above, the inequity resulted, in part, from the failure of the FCAB to enforce Mexican laws that protect workers from intimidation, which provide that only employees can vote, and which provide for proceedings to address alleged violations.

However, the representation election was also inequitable because of the manner in which it was conducted. The Petitioners submit that the FCAB violated Article 5(1) of the NAALC by requiring the workers to vote verbally and publically, by failing to hold the election at a neutral location, and by failing to provide adequate protection for the safety and security of the workers who wished to vote.

The principle of secret ballots is essential to a free and democratic election. This general principle has been recognized by international law, as incorporated by Mexico. Article 25 of the International Covenant on Civil and Political Rights states:

"Every citizen shall have the right and the opportunity... without unreasonable restrictions... to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors..."

In the context of internal union elections, the U.S. NAO has considered the issue of secret ballots, and expressed a concern about whether verbal and public voting complies with norms guaranteeing free association. The U.S. NAO quoted with approval the findings of a study by independent experts:

"This democratic act of electing representatives must be free from any interference from the employer, the government, political parties ... This is the exclusive right of union members, and they should be able to exercise it without any kind of pressure".<sup>136</sup>

The U.S. NAO concluded that "It is apparent that this is not always followed."<sup>137</sup>

The representation election at the ITAPSA plant presents a clear argument for secret ballot voting. The campaign of intimidation organized by ITAPSA and the CTM depended on public voting to coerce the workers. As noted above, the FCAB required that the workers cast their votes verbally, while surrounded by CTM and ITAPSA representatives and thugs, all of whom threatened retaliation. In this climate of violence and intimidation, a public vote could not be a free vote.

As discussed above, it is clear that the FCAB failed to provide adequate protection for the safety and security of the workers who wished to vote. The use of a neutral location for elections, with FCAB personnel to provide security, would address the vulnerability of the workers to violence and coercion. As with secret ballot votes, adequate security should be considered a prerequisite for fair and equitable elections whereby workers may freely exercise their right to organize a union of their choice. The Petitioners submit that Article 5(1) of the NAALC must require that elections be held by secret ballot, in neutral locations, and with adequate protections for the safety and security of workers who wish to vote.

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<sup>136</sup> U.S. NAO Report on Ministerial Consultations on Submission No. 940003, Tab C-3, at p. 13.

<sup>137</sup> *Ibid.*



#### 4. Unwarranted Delays

Article 5(1)(d) of the NAALC provides that Mexico will ensure that administrative and tribunal proceedings do not entail "unwarranted delays." Similarly, Article 5(2)(b) requires Mexico to provide that final decisions are "made available without undue delay." As discussed above, Article 3(1)(g) further provides that proceedings shall be initiated "in a timely manner."

Unwarranted delay is always an impediment to fair and equitable adjudication, but in the present case, each of the delays also served the interests of the campaign of intimidation. In the context of allegations of coercion, discriminatory dismissals, and election fraud, the persistent and unwarranted delays in FCAB proceedings have exacerbated the effect of illegal conduct and the failure of the FCAB to effectively enforce Mexican law.

The first series of delays occurred during the organizing drive. As noted above, ITAPSA and the CTM brought several motions to challenge and delay the *recuento* petition filed by STIMAHCS on May 26, 1997. All of these motions were eventually denied, but several additional hearings were required. It is clear that, together with the administrative delay, the total period required to schedule the representation election was more than three months. This delay in scheduling the election directly assisted the campaign of intimidation by extending the period during which the workers were subjected to surveillance, direct intimidation, physical violence, dismissals, and other forms of coercion.

The second instance of unwarranted delay affected the applications brought by the dismissed workers seeking reinstatement. As noted above, delay and economic pressure are two factors which prevent the majority of unjustly dismissed workers from ever asserting their right to reinstatement. In the present case, the delay had the added effect of assisting the campaign of intimidation because reinstatements were delayed until after the election was held, so that the dismissed workers were prevented from campaigning for STIMAHCS and the dismissals had already served to intimidate the other workers.

A third unwarranted delay occurred in the five month period following the election. Article 5(2)(b) of the NAALC provides that final decisions are to be made available "without undue delay." In the present case, the FCAB failed to issue a final decision with respect to the results of the election until February 1998, in spite of the fact that the decision is dated December 4, 1997. This two month delay prejudiced the *amparo* filed by STIMAHCS, and served the interests of the continuing campaign of intimidation, evident most recently in the violence which occurred at the American Brakeblock plant on December 15, 1997.

To conclude, the FCAB proceedings have consistently been delayed to the prejudice of STIMAHCS. All of the delays discussed above directly served the campaign of intimidation, and each prevented the FCAB proceedings from being fair, equitable and transparent. The Petitioners submit that Mexico and the FCAB have violated Articles 5(1)(d), 5(2)(b) and 3(1)(g) of the NAALC.

#### **E. THE FAILURE TO ENSURE PRIVATE ACCESS TO ENFORCEMENT**

Article 4 of the NAALC requires Mexico to ensure that persons with a legally recognized interest have appropriate access to labour tribunals, and recourse to procedures, for the enforcement of Mexican labour law. The Petitioners submit that Mexico has failed to provide for appropriate private access to enforcement, in violation of Article 4 of the NAALC.

As discussed above, STIMAHCS representatives objected to the climate of intimidation and coercion in which the election was being conducted. The FCAB representatives took no action to restrain the thugs, but only recorded the facts of the objection in a summary report submitted to the FCAB. Although Mexican law prohibits the conduct which was alleged, and indeed, requires that hearings be conducted where violations are suspected, FCAB procedures do not provide for immediate investigations, suspension of elections, or immediate sanctions for illegal conduct. It is unclear whether formal procedures even exist for such measures to be taken. What is clear, however, is that there

is no practical way that FCAB representatives could investigate illegal conduct or order sanctions while vulnerable to violence and intimidation. As well as not being able to ensure the safety of the voters, the FCAB representatives were not themselves safe.

The FCAB final decision, dated December 4, 1997, indicates clearly that even following representation elections, the FCAB will not consider objections which pertain to election procedures. The decision states:

"... Article 931 of the corresponding law which states that the objections must pertain to the workers present at the vote and not to the carrying out of the procedure."<sup>138</sup>

Appropriate access to labour tribunals and procedures must include notice and an opportunity to be heard and to present evidence in timely proceedings which offer effective sanctions for illegal conduct and also for inequitable procedures. In the present case, none of these criteria were met. The STIMAHCS representatives were not given notice of FCAB proceedings and were repeatedly denied an opportunity to be heard, with the exception of the statement which was recorded in the election report. The FCAB did not permit STIMAHCS representatives to present evidence in the form of witness statements, photographs or videotapes, either at the time of the election or in the months following. Moreover, based on the statement in the FCAB final decision that valid objections cannot pertain "to the carrying out of procedure", it appears that independent unions will never be able to object to FCAB election procedures, such as the requirement of public and verbal voting in representation elections.

The appropriate procedures required by Article 4 of the NAALC would include procedures for the immediate investigation of allegations of illegal conduct, with appropriate sanctions, such as suspension of elections. Following elections, there must be procedures to challenge the election procedures and the manner in which an election is conducted.

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<sup>138</sup> FCAB Final Decision (December 4, 1997), Tab B-9; FCAB Final Decision (Spanish) (December 4, 1997), Tab B-10.

However, none of these procedures would be effective without protections for the safety and security of workers who wish to vote, and without procedures to prevent intimidation from having an impact on the outcome of the election. For this reason, in order to comply with Article 4 of the NAALC, FCAB procedures should provide for elections to be held by secret ballot, in neutral locations, and with adequate protections for the safety and security of the voters and the integrity of FCAB election procedures.

As discussed above, the FCAB repeatedly denied STIMAHCS and the workers proper notice, due process and an opportunity to be heard both prior to and following the representation election. The Petitioners submit that each of those actions constitutes a violation of Article 4 of the NAALC. Similarly, the instances of undue and unwarranted delay, as discussed above, also violate Article 4, as appropriate access must be considered to include timely access whereby effective sanctions are available.

#### **F. THE FAILURE TO PROVIDE FOR HIGH LABOUR STANDARDS**

Article 2 of the NAALC provides that Mexico "shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity [sic] workplaces." The Petitioners submit that Mexican laws and regulations do not provide for high labour standards with respect to voting procedures, and with respect to prohibitions against discriminatory dismissals.

"High labour standards" must include protections for workers who exercise their right to organize. As discussed in detail above, the election procedures administered by the FCAB fail to provide adequate protection from intimidation and coercion. Further, secret ballot votes must be considered a basic labour standard, and certainly must be required by high labour standards, as set out in Article 2. Similarly, high labour standards should include provisions to guarantee the safety and security of workers who wish to vote. For these reasons, the Petitioners submit that high labour standards should require that all union elections be held by secret ballot, in neutral locations, and with appropriate protections for

the safety and security of workers who wish to vote. These measures are, at a minimum, required by Article 2 of the NAALC.

Another area of Mexico's labour law which falls short of ensuring high labour standards is protection from discriminatory dismissals. As discussed above, Mexican law provides a formal right of reinstatement, but few workers are able to avail themselves of that right because of economic pressures and lengthy delays in FCAB proceedings. More importantly, the FCAB has found that workers may be legitimately dismissed pursuant to an exclusion clause if they have been expelled by an incumbent union, even if the sole reason for expulsion is support for an independent union. In these circumstances, the effect of exclusion clauses is to sanction otherwise discriminatory dismissals.

The Petitioners submit that, by allowing discriminatory dismissals to occur in effect, Mexico has failed to provide adequate protection for the right to organize. At a minimum, high labour standards must prohibit the application of exclusion clauses to workers who have voted for a non-incumbent union as a violation of freedom of association and the right to organize.

#### **PART IV – CONCLUSIONS**

##### **A. THE FAILURE TO ENFORCE MEXICAN LAW**

The Petitioners submit that Mexico and the FCAB have violated Article 3 of the NAALC by failing to promote compliance with and effectively enforce Mexican labour laws protecting workers' rights to freely associate and to organize a union of their choice.

The evidence indicates that the FCAB repeatedly failed to take any action to enforce provisions of Mexican laws that protect workers' right to organize, protect workers from violence and intimidation, and guarantee fair election procedures. Further, Mexico and the FCAB have failed to initiate timely proceedings, or provide effective sanctions for illegal dismissals for union activity.

**B. THE FAILURE TO ENSURE PROCEEDINGS ARE FAIR, EQUITABLE AND TRANSPARENT**

The Petitioners submit that Mexico and the FCAB have violated Article 5 of the NAALC by failing to ensure that the FCAB administrative and labour tribunal proceedings are fair, equitable and transparent, and by failing to ensure that the FCAB is impartial and independent.

The evidence indicates that the composition of the FCAB and the close relationship between the CTM and the PRI both prevent the FCAB from being an impartial and independent adjudicative body in matters where the interests of the CTM are affected.

The evidence further indicates that FCAB administrative and labour tribunal proceedings are not fair, equitable and transparent. STIMAHCS was repeatedly denied due process of law and the opportunity to present information and evidence, both during the election and in the months following the election. The conduct of the election was manifestly unfair and inequitable in that the voters list was fraudulent, voting was conducted publicly and verbally, and the FCAB failed to protect the safety and security of the workers who wished to vote. Further, FCAB proceedings were characterized by persistent and unwarranted delays, all of which served the interests of ITAPSA and the CTM.

**C. THE FAILURE TO ENSURE PRIVATE ACCESS TO ENFORCEMENT**

The Petitioners submit that Mexico and the FCAB have violated Article 4 of the NAALC by failing to provide procedures by which laws protecting the workers from intimidation may be effectively enforced. Specifically, FCAB procedures do not provide for immediate investigation of allegations of illegal conduct, and do not provide for effective sanctions, such as suspension of elections. Further, Mexico and the FCAB failed to ensure appropriate access to FCAB proceedings following the election by failing to provide notice, by prohibiting objections with respect to inequitable election procedures, and by repeatedly refusing to allow an opportunity to be heard and to present evidence with respect to violations of Mexican law.

**D. THE FAILURE TO PROVIDE FOR HIGH LABOUR STANDARDS**

The Petitioners submit that Mexico has violated Article 2 of the NAALC by failing to ensure that its labour laws and regulations provide for high labour standards. The facts indicate that Mexican law does not require that representation elections be held by secret ballot, in neutral locations, and with adequate protections for the safety and security of workers who wish to vote. Further, Mexican law has failed to prohibit discriminatory dismissals under the terms of exclusion clauses. Both of these omissions should be considered as necessary protection for freedom of association and the right to organize.

## APPENDIX A – THE PETITIONERS

### **A. THE ECHLIN UNIONS**

1. **The United Steelworkers of America** (in Canada) is a diverse union which represents approximately 185,000 Canadian workers. While the Union had its origins in the steel and mining industries, today, members can be found in healthcare, hotels, department and grocery stores, manufacturing, security, taxis and other sectors of the Canadian economy. In particular, USWA, Local 6363 represents workers of Neelon Castings, Ltd., a subsidiary of Echlin, Inc., in Sudbury, Ontario. USWA, Local 3950 represents workers at Echlin Canada, Inc., a subsidiary of Echlin, Inc., in Mississauga, Ontario and USWA, Local 7625 represents workers at Distex in Montreal.

2. **The United Steelworkers of America, AFL-CIO/CLC ("USWA")** is a labor organization representing approximately 800,000 workers in the United States and Canada. The USWA represents workers in various industries, including the steel, rubber, aluminum, can and other industries. In particular, the USWA and United Steelworkers of America, Local 119 represent workers of the Preferred Technical Group, a subsidiary of Echlin, Inc., in Mitchell, Indiana.

3. **The International Association of Machinists and Aerospace Workers ("IAM")** is a labour union representing approximately 750,000 workers in North America in a broad range of industries. In Canada the IAM has approximately 55,000 members. In particular, IAM, Local 2330 has 155 members working for Long Manufacturing, a subsidiary of Echlin, Inc. in Cambridge, Ontario.

4. **International Union, United Automobile, Aerospace and Agricultural Workers of America ("UAW")** represents a diverse work force with occupations ranging from automobile manufacturing to university workers. However, the UAW primarily represents automobile and auto-parts workers, including Local 985 Echlin Special Products (the ACE Electric Division) in Livonia, MI., Local 2049 Preferred Technical Group in Columbia City, IN., and Local 428 American Electronic Components in Elkhart, Indiana. Because all three locals are subsidiaries of Echlin, Inc., the UAW has a particular interest in this matter.



**5 The National Automobile, Aerospace, Transportation and General Workers Union of Canada ("CAW-Canada")** is the largest industrial union in Canada. It represents 210,000 workers in many sectors and in all parts of the country.

**6. The International Brotherhood of Teamsters, AFL-CIO ("IBT")** is North America's largest labor organization, representing over 1.4 million workers throughout the United States and Canada. IBT represents people who work in the trucking, parcel delivery, warehouse, construction, health care, and numerous manufacturing industries, including several Echlin plants. IBT members of Local Unions 92 (Canton, OH), 279 (Decatur, IL), 364 (South Bend, IN), 391 (Winston-Salem & Vicinity, NC), 745 (Dallas, TX), 810 (New York, NY), and 851 (New York, NY) are United States citizens who are employed by Echlin, Inc. or its U.S. subsidiaries, and are directly affected by Echlin's international labor practices.

**7. Union of Needle Trades, Industrial and Textile Employees (UNITE, AFL-CIO)** represents industrial and textile workers in the U.S., Canada and Puerto Rico. In particular, UNITE, AFL-CIO Midwest Regional Joint Board and its Local 713 represent workers at Friction, a subsidiary of Echlin, Inc., located in Fredericksburg, Virginia.

**8. The United Electrical, Radio and Machine Workers of America ("UE")** is a labor organization representing approximately 35,000 workers in diverse industries and occupations across 26 states. Its membership ranges from factory workers in the metalworking, plastics and various other manufacturing industries to employees in the public sector and in educational institutions. The UE has been on the forefront of the effort to establish meaningful relationships between U.S. and Mexican workers through its "Strategic Organizing Alliance" with Mexico's Frente Auténtico del Trabajo. In particular, UE Local 1090 represents workers at Friction, a subsidiary of Echlin, Inc. in Irvine, California.

**9. The United Paperworkers International Union ("UPIU")** is a labor organization representing 250,000 employees throughout the U.S. and Canada. The UPIU represents employees in the pulp, paper, and paper products industries; in auto parts and metal trades; in cement; and other industries. In particular, the UPIU and UPIU Local 7307 represent

the production and maintenance employees at the Preferred Technical Group facility in Andrews, Indiana. In addition, the UPIU and UPIU Local 1056 represent the production employees at the Hermaseal Company, a subsidiary of Echlin, Inc., in Elkhart, Indiana.

## **B. THE LABOUR CENTRALS**

1. **The Canadian Labour Congress ("CLC")** is the principal central labour body in Canada. The majority of national and international unions in Canada are members of the CLC. Overall the CLC represents 2.3 Canadian workers, 72 national and international unions, 12 provincial and territorial labour federations and 125 district labour councils as well as a number of directly chartered workplaces across Canada.
2. **Union Nacional de Trabajadores (National Workers Union, "UNT")** is a union central with a national structure and representation throughout all of the Mexican states, formed by confederations and federations, national unions and locals from all over the country.
3. **The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO")** is the umbrella labor organization in the United States of America. The AFL-CIO represents 38 million working Americans in 78 national unions. The 78 autonomous unions that make up the AFL-CIO include more than 35,000 local unions throughout the United States and negotiate with several hundred thousand employers.
4. **Frente Auténtico del Trabajo (Authentic Workers' Front "FAT")** is an independent federation with 50,000 members in union, cooperative, peasant and popular urban sectors. The following affiliated national unions and related organizations are also in support of this Submission: Sindicato Industrial de Trabajadores Textiles y Similares "Belisario Dominguez" (Industrial Union of Textile and Related Workers, "Belisario Dominguez"), as well as the following locals: "Santa Julia," "Texorient," and "Abetex"; Sindicato de Trabajadores de la Industria Metalica, Hierro, Acero, Conexos y Similares (Union of Workers in the Metal, Iron, Steel, and Related and Similar Industries, "STIMAHCS"), as well as the following locals: "Tuto di Oro" and "Sealed Power"; Sindicato Nacional de Trabajadores de la Industria del Hierro, el Acero, Productos Derivados y Conexos de la Republica Mexicana (National Union of Workers in the Iron, Steel, Derived and Related Products of the

Republic of Mexico, "SNTHA"); Sindicato Nacional de Trabajadores de Elevadores OTIS (National Union of OTIS Elevator Workers); Sindicato Regional de de Choferes de Sitios y Rutas FOCEP (Regional Union of Drivers of FOCEP Sites and Routes); Sindicato "Ricardo Flores Magón" de Trabajadores de Hulera Industrial Leonesa S.A. de C.V. (Union of Industrial Rubber Workers "Ricardo Flores Magón" at Leonesa, S.A. de C.V.); Sindicato de Trabajadores del Instituto Nacional de Capacitación del Sector Agrepecuario (Union of Workers of the National Training Institute for the Agricultural Sector); Centro de Estudios y Taller Laboral, A.C. (Labor Workshop and Studies Center); Grupo Ocho de Marzo (Eighth of March Group); Organización Popular Independiente, A.C. (Popular Independent Organization, Inc.).

### **C. OTHER PETITIONERS**

1. **Asociacion Nacional de Abogados Democraticos (National Association of Democratic Lawyers, "ANAD")** is an independent organization which includes in its membership approximately 500 lawyers who specialize in labor law and human rights in the Republic of Mexico.

2. **Ecumenical Coalition for Economic Justice** is a social justice organization formed by the major Protestant and Catholic churches in Canada. ECEJ supports its church membership through activities which focus on:

- research policy and advocacy towards more just and sustainable economic government policies
- building understanding, capacity and commitment within church networks to work for a just moral and sustainable economy.
- working in coalition with labour and community organizations.

3. **Canadian Association of Labour Lawyers ("CALL")** is a national organization of 250 lawyers representing workers and trade unions in Canada. CALL was founded in 1989 and has Vice-Presidents from every region of Canada who, together with the officers, comprise an elected council which governs the organization. CALL is active in education, legislative advocacy and other initiatives designed to protect and advance the basic rights of working people. CALL is also concerned with the promotion of the right of workers to freedom of

association on an international level including the Americas.

4. **Canadian Lawyers Association for International Human Rights ("CLAIHR")** is a non-profit, non-governmental organization established to promote and protect human rights internationally through the use of law and legal institutions. CLAIHR works in the following areas:

- analysis of laws, institutions, and practices affecting human rights;
- development and strengthening of laws and institutions which protect human rights;
- promotion of awareness of human rights issues within the legal community;
- support for lawyers, legal organizations and others dedicated to achieving human rights.

5. **The Center for Constitutional Rights ("CCR")** is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution, ILO Conventions and the Universal Declaration of Human Rights. CCR is committed to the use of law as a positive force for social change.

6. **Centro de Investigación y Solidaridad Obrera (Center for Research and Worker Solidarity).**

7. **Common Frontiers** is a multi-sectoral working group which confronts and proposes an alternative to the social environmental and economic effects of economic integration in the Americas. Common Frontiers works through a combination of research, analysis and action, in cooperation with labour, human rights, environmental, church, development and economic and social justice organizations.

8. **The Coalition for Justice in the Maquiladoras** is a tri-national coalition of religious, environmental, labor, latino and women's organizations which seek to pressure U.S. transnational corporations to adopt socially responsible practices within the maquiladora industry, to ensure a safe environment along the U.S.-Mexico border, safe working conditions inside the maquila plants and a fair standard of living for the industry's workers.

9. **Comité Independiente de Derechos Humanos (Cd. Juárez) (Independent Human Rights Committee).**

10. **The Inter-Church Committee on Human Rights in Latin America ("ICCHLRA")** is a Canadian ecumenical social justice coalition of more than twenty different Christian denominations and religious congregations. Founded in 1973 ICCHLRA's mission is to promote human rights and social justice throughout Mexico, Central and South America in solidarity with both Canadian and Latin American partner churches, human rights groups and grass roots organizations. This mission is carried out through regular fact finding visits to the region; accompaniment of partners in times of crisis; education of and outreach to our church constituency and the Canadian public; research, advocacy and lobbying work with the Canadian government and at multi lateral fora; and many other activities.

11. **The National Interfaith Committee for Worker Justice** educates and mobilizes the U.S. religious community on issues and campaigns to improve wages, benefits, and working conditions for workers, especially low-wage workers.

12. **The National Labor Committee** is an independent, non-profit human rights organization that focuses on the issue of protecting the rights of workers producing products destined for the U.S. market.

13. **The National Lawyers Guild ("NLG")** is an organization of U.S. lawyers, law students, legal workers, and jailhouse lawyers dedicated to the proposition that human rights shall be regarded as more sacred than property interests. The NLG's International Committee works to promote the human dignity and rights of workers in the context of the global economy. The Labor and Employment Committee provides legal and/or political support, where possible, for workers in their struggles for economic and social justice.

14. **Red Mexicana de Acción Frente al Libre Comercio (Mexican Action Network on Free Trade, "RMALC")** is a coalition of more than one hundred environmental, labor, human rights, peasant and farmworker, debtor, and small and medium-sized business organizations which has evaluated the impact of NAFTA and developed alternative proposals regarding trade.

15. **Sindicato de Academicos del Instituto Nacional de Antropología e Historia (Union of Academics of the National Institute of Anthropology and History).**
16. **Sindicato Gremial de Trabajadores del Volante, Similares y Conexos Region Lagunera (Union Guild of Taxi and Related and Similar Workers of the Lagunera Region).**
17. **Sindicato Independiente de Trabajadores de la Universidad Autónoma Metropolitana (Independent Union of Workers of the Autonomous Metropolitan University, "SITUAM")** is an independent union which includes approximately 9,000 university workers and academics.
18. **Sindicato Nacional de Trabajadores Académicos del Colegio Nacional de Educación Profesional Técnica (National Union of Academic Workers of the National College of Professional Technical Education, "SINTACONALEP")** is a union which includes approximately 4,500 academics throughout the Republic of Mexico.
19. **Sindicato Nacional de Trabajadores de la Comisión Nacional Bancaria y de Valores (National Union of Workers of the National Bank and Valuables Commission)** is a democratic union of federal workers covered by Section B of the Mexican labor code and has approximately 250 members.
20. **Sindicato Unico de Trabajadores de Ecotans y Sitios Conexos y Similares de la Región Lagunera del Estado de Durango (Sole Union of Workers of Ecotans and Related and Similar Sites of the Lagunera region of the State of Durango).**
21. **Sindicato Nacional de Trabajadores de El Colegio de Mexico (National Union of Workers of the College of Mexico)** is an independent union with approximately 250 members.
22. **Sindicato Nacional de Trabajadores al Servicio de las Lineas Aereas Similares y Conexos "Independencia" (National Union of Airline Workers and Affiliates, "Independencia")** is an organization that represents the professional interests, at a national level, of workers in the aviation service, with 4,500 affiliated workers in work classes such

as mechanics, assistants, "A.S.P.", skilled workers, general workers, telephone operators, motorized equipment operators, drivers who provide their services at the airport, hangars and shops.

**23. Sindicato Nacional de Trabajadores del Instituto Mexicano del Petróleo (National Union of Workers of the Petroleum Institute, "SNTIMP")** is a union with approximately 1,250 members which recently succeeded in gaining the full rights to strike and to establish bi-lateral collective agreements instead of being considered an exception under Section B of the Mexican law which applies to workers who are federal employees.

**24. Sindicato del Telefonistas de la Republica Mexicana (Mexican Telephone Workers Union)** is a national union of the telecommunications industry with 54,000 affiliated workers throughout the country.

**25. Sindicato de Trabajadores Académicos de la Universidad Autónoma Chapingo (Union of Academic Workers of the Autonomous University of Chapingo, "STAUACH")** is an independent union composed of approximately 1,000 academics.

**26. Sindicato de Trabajadores de Productos Pesqueros de salina Cruz, Oaxaca (Union of Workers of Fish Products of Salina Cruz, Oaxaca)** is an affiliate of the CROC (the Revolutionary Confederation of Workers and Peasants, an official labor federation).

**27. Sindicato de Trabajadores de la Universidad Autónoma Chapingo (Union of Workers of the Autonomous University of Chapingo, "STUACH")** is an independent union composed of approximately 2,400 university workers.

**28. Sindicato Unico de Trabajadores de Calzado Sandak (Sole Union of Workers of Sandak Shoes, "SUTCS").**

**29. Sindicato Unico de Trabajadores del Centro de Investigación y Estudios Superiores en Antropología Social (Sole Union of Workers of the Center for research and Higher Studies in Social Anthropology, "SUTCIESAS").**

30. **Sindicato Único de Trabajadores de la Secretaría de Pesca** (Sole Union of Workers of the Fisheries Secretariat) is a union of federal workers with approximately 800 members.

31. **Sindicato de Trabajadores de la Universidad Nacional Autónoma de México** (Union of Workers of the Mexican National Autonomous University, "STUNAM") is a union with 25,000 administrative and academic affiliated workers.



## APPENDIX B – THE RESPONDENTS

1. **Echlin, Inc.** is a multi-national corporation which is based in Branford, Connecticut, U.S., and which operates industrial manufacturing plants in Canada, Mexico and the U.S.. Its production is distributed to Europe, North America and South America. Echlin employs approximately 32,000 employees world-wide, and gross sales for 1997 were 3.6 billion dollars (U.S.). ITAPSA and American Brakeblock are wholly owned subsidiaries of Echlin, Inc..
2. **ITAPSA S.A. de C.V. (ITAPSA)** is a Mexican subsidiary of Echlin. The ITAPSA plant in Reyes la Paz is engaged in industrial manufacturing, and employs approximately 300 workers. The majority of the production of the ITAPSA plant is exported to Canada, South America and the U.S..
3. **America Brakeblok S.A. de C.V. (American Brakeblock)** is a Mexican subsidiary of Echlin and is engaged in industrial manufacturing.
4. **Confederacion de Trabajadores Mexicanos (Confederation of Mexican Workers, "CTM")** is the largest union confederation in Mexico, and has a close and mutually dependent relationship with the dominant political party in Mexico, the Institutional Revolutionary Party ("PRI"). The ITAPSA workers are represented by the Sindicato Nacional de Trabajadores de la Industria Automotriz, Similares y Conexos de la Republicana Mexicana (National Union of Mexican Workers in the Automotive and Allied Industries), which comprises Section 15 of the CTM. Section 3 of the CTM represents workers at American Brakeblock. Any reference to the CTM in this Communication includes a reference to Section 15 and Section 3.
5. **Junta Federal de Conciliacion y Arbitraje (Federal Conciliation and Arbitration Board, "FCAB")** is a federal administrative tribunal which is established pursuant to Article 123 of the Mexican Constitution, and which adjudicates all labour disputes arising within the federal sphere of jurisdiction. The FCAB is a tripartite body, with the government appointing the President, and union and employer associations electing their respective representatives. FCAB decisions are final, subject only to constitutional appeals to the federal courts.